

Eramo v. Rolling Stone, et al., 11/1/16, Vol 1

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

NICOLE P. ERAMO, * CIVIL ACTION 3:15-CV-00023
* NOVEMBER 1, 2016
Plaintiff, * JURY TRIAL, Vol. 1
vs. * PLAINTIFF'S CLOSING ARGUMENT
*
ROLLING STONE, LLC, *
SABRINA RUBIN ERDELY, *
WENNER MEDIA, LLC, * Before:
* HONORABLE GLEN E. CONRAD
Defendants. * UNITED STATES DISTRICT JUDGE
* WESTERN DISTRICT OF VIRGINIA

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1 CONTENTS

2
3 PLAINTIFF'S CLOSING ARGUMENT

4 By Mr. Clare.....4

5 ///

1 (9:31 a.m.)

2 (Jury in)

3 THE COURT: I count all ten jurors back in their
4 places, ready for the next stage of the trial.

5 Folks, as you will recall, both sides have now
6 rested their respective cases, and it becomes time for you to
7 consider the closing arguments of counsel.

8 Keep in mind what I've said at the outset of the
9 trial. The arguments of counsel are not evidence. They're
10 merely summaries to help you remember what the evidence has
11 been, focus on what each side believes is important, and
12 understand each side's theory of the case.

13 Under the rules of court, the plaintiff has the
14 opportunity to make the first and last closing statement
15 inasmuch as the plaintiff carries the burden of proof by a
16 preponderance of the evidence in some respects and by clear
17 and convincing evidence in other respects.

18 So, with that explanation, Mr. Clare, are you ready
19 to proceed?

20 MR. CLARE: Thank you, Your Honor.

21 Good morning, ladies and gentlemen. Here we are,
22 two weeks later, 12 live witnesses, 11 hours of video
23 testimony, and 286 exhibits admitted into evidence by both
24 sides.

25 I know that you're anxious to begin your

1 deliberations, and Nicole and our entire legal team are
2 grateful for the attention and diligence and patience that
3 you've shown with us as we've put on our evidence over the
4 last two weeks. We've thrown a tremendous amount of
5 information at you all. And it's evident that you have paid
6 very close attention, and you have done a tremendous job
7 carrying out your oath at the beginning of this case to hear
8 and consider the evidence in resolving this important dispute
9 for Nicole and for her family.

10 I start my argument the same way I began two weeks
11 ago. This is a case about journalism. It's not about rape or
12 whether Jackie was or was not sexually assaulted at a
13 fraternity house or whether victim choice is a good or bad
14 policy for universities to follow. It's not a referendum on
15 the University of Virginia. The University of Virginia is not
16 a party to this case. Nicole Eramo is a private citizen; she
17 brought this claim as an individual.

18 This is a case about journalism. It's about how
19 Nicole Eramo treated Jackie. It's about whether an
20 experienced professional journalist like Sabrina Erdely and a
21 national magazine like Rolling Stone, whose editors brag about
22 the journalism awards they have won and the high standards
23 that they have for reporting and fact-checking, have to get
24 the facts right before they accuse someone of mistreating and
25 suppressing a brutal gang rape.

1 And, unfortunately, it's about what happens to real
2 people like Nicole Eramo, who get up every day and go do their
3 important jobs, when they become collateral damage in the
4 quest for sensationalized reporting. And that's exactly what
5 happened here.

6 In "A Rape on Campus," which was first published in
7 November 19th, 2014, and we argue was republished on
8 December 5th, 2014, when Rolling Stone put those editor's
9 notes back up and put the article back up for the world to
10 see, Sabrina Erdely and Rolling Stone falsely accused Nicole
11 Eramo of some horrible things, from discouraging Jackie from
12 telling her story, defending the practice of hiding campus
13 rape statistics for parents "because nobody wants to send
14 their daughter to the rape school," and not reacting to
15 Jackie's allegations of multiple gang rapes at a fraternity.

16 In radio and podcast interviews, in order to
17 generate additional publicity for the article, media
18 appearances set up by Rolling Stone and Wenner Media, Sabrina
19 Erdely answered questions about Nicole Eramo, accusing her of
20 brushing off and suppressing Jackie's allegations, doing
21 nothing with those allegations, not treating rape as a crime,
22 and not reporting Jackie's rape to the police.

23 We've seen the evidence. We've seen the e-mails.
24 You've heard from the police officers. You know that's not
25 true.

1 She accused Nicole Eramo of discouraging Jackie from
2 moving the assault forward and meeting Jackie's claim with
3 indifference. And when other reporters, reporters that had
4 actually done the digging and done the homework, started to
5 ask some questions about the sourcing and the reporting and
6 the attribution in this article, Rolling Stone doubled down on
7 the allegations.

8 They issued a press release on December 1st and
9 circulated it through the 2nd and the 3rd and the 4th of
10 December, accusing Nicole of putting Jackie through an ordeal
11 and again treating her claim with indifference.

12 But they were wrong about all of these things, and
13 that's why we're here.

14 Rolling Stone and Sabrina Erdely made Nicole Eramo
15 the face of institutional indifference for a place where there
16 is no justice for sexual assault victims, where victims are
17 coddled into doing nothing, where advocates are assigned to
18 victims who are pretending or even thinking they're on the
19 victim's side when actually they're discouraging and silencing
20 them, and where reports are met with institutional
21 indifference.

22 All these words appear on the same page as the
23 picture, the doctored photograph of Nicole.

24 Now, these are incredibly serious and false
25 allegations about a person who has devoted her entire adult

1 life to doing the exact opposite of all of these things. And
2 you've heard the testimony from Nicole about what it took to
3 get to this point in her life. You've heard the education and
4 the training that she's had, the years she's spent building
5 trust and rapport with students, and you heard from some of
6 those students directly and how much they love Nicole and what
7 she meant in their lives. That's what makes these allegations
8 so hurtful.

9 And it's now up to you to set the record straight
10 for Nicole with your verdict.

11 After Mr. Sexton and I are done talking to you
12 today, Judge Conrad is going to instruct you on the law that
13 will guide you in your deliberations, and he'll give you a
14 verdict form -- actually, three of them -- to fill out.

15 He's going to instruct you on the law that applies
16 to defamation. And I realized from one of the notes that was
17 passed earlier in the case that I didn't do a very good job in
18 my opening remarks of explaining to you what defamation is, so
19 I'm going to take that opportunity now. The judge is going to
20 give you the legal instruction.

21 Defamation -- and I'll show it to you in just a
22 minute, the instruction that Judge Conrad will give you, but
23 defamation is the legal remedy available in the Commonwealth
24 of Virginia to people like Nicole Eramo who have had false
25 things said about them to damage their reputation.

1 Let's look at the definition. And what I'm going to
2 show you is excerpted from the jury instructions that Judge
3 Conrad will give you and you will have in the jury room to
4 guide your deliberations.

5 And this is the definition of defamation. It's on
6 page 23 of the jury instruction book that the judge will give
7 to you. And it's referenced on the verdict form that you will
8 have to fill out. The judge is going to ask a series of
9 questions about whether the statements at issue in this case
10 are actionable according to this definition. So this is an
11 important one.

12 For each of the statements at issue, defamation
13 means -- and we will ask you to find, by a preponderance of
14 the evidence, for these elements -- that the defendant made
15 the statement; that the statement was seen, read, or heard by
16 someone other than the plaintiff; that the statement is of and
17 concerning the plaintiff, Nicole Eramo, that the statement was
18 made about her; that the statement is false and defamatory --
19 and I'm going to come back and talk about what defamatory
20 means -- and that Nicole was damaged as a result of the
21 statement.

22 Now, what does it mean for a statement to be
23 defamatory? The judge will give you another instruction about
24 what that means. The jury instruction will tell you that
25 defamation is a false factual statement that concerns and

1 harms the plaintiff or the plaintiff's reputation.

2 In the Commonwealth of Virginia, a person has a
3 right to the uninterrupted enjoyment of his or her reputation,
4 and defamation is when someone interrupts the enjoyment of
5 that reputation.

6 To be defamatory, a statement must be more than
7 merely insulting, offensive, unpleasant, or inappropriate. It
8 must have made Nicole Eramo appear odious, infamous, or
9 ridiculous.

10 Said otherwise, a defamatory statement must be a
11 false statement that harms a person's reputation, rendering
12 her contemptible or ridiculous in the public's estimation and
13 exposing her to public hatred, ridicule, or contempt.

14 All of the statements at issue in this case, the
15 ones that the judge will instruct you on, meet these
16 definitions and meet the definition of defamatory meaning.
17 They were published to a national audience, in the case of
18 Rolling Stone magazine, the print edition, the online edition
19 of the article -- it was published on the internet -- and in
20 those radio and podcast interviews. The radio broadcast, as
21 you heard, was sent to the entire New York metropolitan area,
22 and the podcast is available on the internet.

23 Those statements describe Nicole specifically by
24 name, in the case of the statements in the article, or in her
25 position as the dean or the trusted dean. Or in some of the

1 statements, they describe an administrator who treats Jackie a
2 certain way, an administration that brushed off Jackie's
3 claims or suppressed her rape.

4 But Nicole Eramo is the only UVa administrator in "A
5 Rape on Campus" described as having interacted with Jackie.

6 These statements, the ones that we'll be talking
7 about and have been talking about for the past two weeks,
8 damaged Nicole Eramo. They damaged her reputation, her
9 ability to do her job.

10 You heard Dean Groves talk about the importance of
11 trust in the student community for doing what she does.
12 That's her whole job, is to build trust with these young women
13 and men who come to her. She told you what a privilege it is
14 to sit with them in their time of need. And there's a trust
15 that comes in those relationships. And this article and these
16 statements destroyed that in a minute.

17 And were they defamatory? Did they cause damage to
18 Nicole?

19 You heard some of the e-mails that Nicole received
20 from readers who read these statements and heard them and felt
21 compelled to look her up and find her e-mail address and write
22 to her about what a despicable human being she is, calling her
23 the dean of rape and other horrible things that plainly,
24 plainly prove that people understood these statements to have
25 the defamatory meaning as required by Virginia law.

1 Now, in his opening statement, Mr. Sexton said that
2 this case requires you to get inside the minds of Sabrina and
3 Sean. And he talked to you about actual malice. And that's
4 another thing we're going to have to talk about, because the
5 judge is going to instruct you on what it means to publish a
6 statement with actual malice.

7 There are jury instructions that will guide you on
8 evaluating this. And I'm going to explain them, go through
9 them briefly now, so that you have them in mind as I present
10 the rest of the evidence to you that we've adduced at trial.

11 The instructions are on pages 32, 35 through 36, and
12 39 of the jury instructions. And they will talk to you about
13 what the definition of actual malice is and the kinds of
14 evidence that you can consider in evaluating whether there was
15 actual malice.

16 The judge talked to you at the beginning of the case
17 about direct evidence and circumstantial evidence. And you
18 will see the types of things that the courts and the
19 Commonwealth of Virginia considers to be circumstantial
20 evidence of actual malice.

21 The jury instruction defining actual malice will say
22 that the statement was made with knowledge of the statement's
23 falsity or reckless disregard of whether the statement is
24 false or not.

25 Nobody comes to court and says, "I knew the

1 statements were false when I published them, and I published
2 them anyway." Or "I recklessly disregarded whether the
3 statement is false or not." So Judge Conrad will also
4 instruct you that you're entitled to consider that
5 circumstantial evidence bearing on these issues, including
6 failure to investigate under certain circumstances, departure
7 from journalistic standards, evidence of some ill will or
8 intent to injure, and evidence of a preconceived storyline.
9 These are some of the things that are listed on the items that
10 you can consider in evaluating whether the defendants made
11 these statements with actual malice.

12 Judge Conrad will instruct you that you can infer
13 actual malice from certain things if there is evidence that
14 the defendants failed to investigate the story where the story
15 was weakened by inherent improbability and internal
16 inconsistency or apparently reliable contradictory
17 information. That's the jury instruction. That is a summary
18 of what happened in this case.

19 A rape story that was too good to be true, quotes
20 from three friends that were too good to be true, internal
21 inconsistencies in the story, and contradictory information
22 available in the reporting file that you all have seen and the
23 audio that you've heard.

24 Judge Conrad will instruct you that if you find the
25 information in defendants' possession at the time of

1 publication did not support the statements that the defendants
2 made or that the defendant was aware of facts contradicting
3 those statements, you can infer actual malice. And where
4 there exists an apparent reason to question the truthfulness
5 of the source and a defendant makes a deliberate decision not
6 to follow up out of a desire to avoid conflicting information,
7 that can be considered as evidence of actual malice.

8 Now, Mr. Sexton, I anticipate, will stand up after
9 I'm done and tell you that Sabrina and Sean got up here on the
10 stand after the fact and said, "We believed Jackie, and we
11 weren't out to get Nicole, and that we found all of this to be
12 credible until a certain point in time."

13 But you, ladies and gentlemen, are the sole judges
14 of the credibility of that testimony. And you should
15 carefully scrutinize their testimony under the circumstances
16 under which each witness testified and decide whether or not
17 that testimony is worthy of belief.

18 If you really want to know the truth about what was
19 in someone's mind at a certain point in time back when this
20 article was published and back when it was being investigated,
21 you don't listen to what they say now; you listen to what they
22 said and did at the time and what they did and didn't do at
23 the time, before all of this blew up and before these lawsuits
24 were filed.

25 That includes all of the contrary information about

1 Nicole in Sabrina's reporting file that was shared not just
2 with Ms. Erdely but also with Rolling Stone magazine; her
3 editor, Sean Woods; and the fact-checker, Liz Garber-Paul, who
4 is an employee of Wenner Media, the corporate defendants in
5 this case.

6 You can consider the statements that you heard on
7 audio of Ms. Erdely's contemporaneous statements about Nicole.
8 You hear her time and time again on the audio -- and we're
9 going to listen to it -- talking about what she thinks about
10 these issues and telling these young college women what she
11 thinks and what they should be thinking about Nicole.

12 That's not journalism. That's not listening to what
13 sources say in reporting on it; that's push polling. It's
14 telling people your preconceived beliefs and then having it
15 echoed back to you and then reporting on it. And that's
16 misrepresentation and it's evidence of malice.

17 You also should consider the deviation from
18 journalistic standards in evaluating this. And a lot has been
19 made in this case about the Columbia Journalism School Report.
20 Everybody has talked about it in this case. And you will have
21 it available to you in the jury room, if you desire, to read
22 through it for yourselves and see what a Pulitzer
23 prize-winning dean of a journalism school said about "A Rape
24 on Campus" and the journalistic failure that was avoidable.

25 That word "avoidable" is important. Malice, actual

1 malice, requires recklessness. And you will have to decide
2 whether or not it was reckless. But when something is
3 reckless, there's an element to it where you know there's a
4 danger, you know there's a risk, and you do it anyway. And
5 that's what the Columbia Journalism Review and Dean Coll found
6 when he said the failure was avoidable. And it's a long
7 report. And you can go through it for yourself and see.
8 Don't take my word for it or Mr. Sexton's word for it; read it
9 from yourselves about what it says about the deviation from
10 journalistic standards.

11 You also can evaluate the efforts that they made to
12 cover up the shortcomings in their reporting. We talked a lot
13 about pseudonyms or fake names for no reason. Remember the
14 three friends? They're masking the fact that Sabrina Erdely
15 never spoke to them, masking the fact that their denials -- or
16 their refusals -- excuse me -- to speak with Ms. Erdely all
17 came through Jackie. And you heard from them. You heard from
18 two of the three of them, saying it never happened.

19 The misleading attributions that they put in the
20 story suggesting that they had independent sourcing for a lot
21 of this information, when, in fact, it all came from Jackie.
22 And the lies and misrepresentations that they told to the
23 media after the fact. You heard Mr. Woods say, "We know who
24 these guys are. We verified their existence."

25 We know that's not true.

1 And you heard Mr. Wenner, in his testimony just the
2 other day, say it's okay to lie to the media when he was asked
3 point-blank: Did people offer to resign over this? And he
4 said, "Not true. I don't have an obligation to be honest with
5 the media."

6 This was not just a failure of journalism. What
7 they did to Nicole here was not just some innocent mistake, as
8 they would have you believe. They knew exactly what they were
9 doing. Ms. Erdely and Rolling Stone needed a villain for the
10 story of institutional indifference they wanted to tell. That
11 institutional villain needed a face. And that face was Nicole
12 Eramo.

13 Ms. Erdely has spent her entire journalistic career
14 writing story after story of institutional indifference,
15 including a bunch of stories for Rolling Stone edited by Sean
16 Woods. Rolling Stone, Sean Woods, Will Dana, Jann Wenner, and
17 Wenner Media knew exactly what they were getting when they
18 approved the idea for this story.

19 All of these stories have the same formula. And
20 with proper credit to a friend of mine, it's the three Vs:
21 victim, villain, and vindicator. Every one of these stories
22 that Ms. Erdely writes has a victim, victim of a horrible sex
23 crime; an institutional villain engaging in some sort of
24 cover-up, nefarious cover-up, to make sure that the victim
25 does not get justice; and then Ms. Erdely and Rolling Stone

1 are the vindicators, exposing that institutional indifference
2 for the world.

3 Ms. Erdely and Rolling Stone were intent on
4 repeating that exact same formula for their campus rape story.
5 She descended on Charlottesville and started pushing her
6 opinions about institutional indifference and victim choice on
7 young men and women that she talked to. You heard how
8 frequently in her reporting notes and audio files she was
9 telling the students what she thought about these issues.

10 She took advantage of these kids. She took
11 advantage of her position as a Rolling Stone reporter. You
12 know, rock stars. It's a glamorous thing to be a reporter for
13 Rolling Stone magazine. And when you're a 19-year-old college
14 student, talking to a Rolling Stone reporter is an exciting
15 opportunity.

16 She took advantage also of the passion that these
17 young men and women have for the advocacy that they do about
18 sexual assault issues. You heard from some of these young men
19 and women about how much they care about these issues and how
20 they interacted with Nicole about them and how they wanted to
21 tell their story about the positive things that were happening
22 at UVa and talk about advocacy and talk about survivor
23 support. That's what they thought they were doing.

24 But Ms. Erdely lured them in with promises of
25 bringing national attention to those issues. And time and

1 time again, she told them what they should be thinking about
2 Nicole. She zeroed in on one vulnerable, troubled,
3 attention-starved young lady and extracted a really salacious
4 story of a brutal gang rape.

5 Remember, we looked at the instructions about
6 inherent improbability. That interview where Jackie told the
7 story to Ms. Erdely was at the very, very outset of this
8 conversation. It came out all in one dose right at the very
9 beginning. And it was a perfect story in many respects. It
10 had all of the elements of a perfect story.

11 But when something is too perfect, when something
12 appears too perfect, it usually is. And that's where you need
13 to take a step back and decide: Does this really make sense?

14 And at that point, with a perfect victim for the
15 story, the facts about institutional indifference and the
16 facts about how Jackie was not getting justice didn't matter.
17 If the facts that she learned for the rest of her
18 investigation, or Jackie's behavior -- not just what she said,
19 but how she acted and what she would and would not let
20 Ms. Erdely do to investigate -- if it didn't fit that
21 preconceived storyline either as it related to her own assault
22 or as it related to Nicole, it was disregarded. Reckless
23 disregard for the truth.

24 Ms. Erdely recklessly disregarded the fact that
25 Nicole arranged for Jackie to meet with the police. You have

1 in your jury books the story -- the article. The lawyers have
2 talked about it for two weeks. You'll have it to look at.

3 Read through the entire story yourself. The law
4 clerk, Christina, read it for us at the beginning. You will
5 not hear any reference anywhere in the article to Nicole
6 having taken Jackie to the police twice. That's a really
7 important fact. And she had the e-mails, and so did Rolling
8 Stone, and so did Wenner Media.

9 Ms. Erdely recklessly disregarded the fact that
10 there were serious discrepancies in Jackie's story. Now,
11 again, Jackie is not on trial here. This is not a rape case.
12 And we don't know the reasons why there were these
13 discrepancies. We're not blaming her.

14 It's true, sometimes victims of trauma have
15 discrepancies in their stories. But that's why people like
16 Nicole and advocates, as you heard from multiple witnesses,
17 take time to allow the witnesses to talk, to build trust, to
18 make sure that we got the story right before you act on it.

19 There were a lot of discrepancies in Jackie's story
20 that never got resolved. And there comes a point in time, if
21 you're a magazine writer or you're a magazine, where there are
22 enough discrepancies in a story, where you have a
23 responsibility to say, we don't have this solid enough to push
24 the print button and send this out to millions and millions of
25 people.

1 That's a responsibility the media has, and they
2 failed it here.

3 Ms. Erdely recklessly disregarded the fact of how
4 Jackie behaved. We've heard the audio. We heard how Jackie
5 provided Sabrina with all these introductions to people and
6 gladly put her in touch with people to talk to. But think
7 about who Jackie put her in touch with and who she refused to
8 put her in touch with.

9 Jackie gladly introduced Ms. Erdely to people who
10 had heard Jackie's story from Jackie, but she refused to
11 identify any of the other people who could corroborate or deny
12 what actually happened.

13 The two biggest examples is Drew, the ringleader of
14 the assault -- she refused any effort to identify him or to
15 allow Ms. Erdely to talk to him or to get comment from him --
16 and the three friends, because Jackie said she had had a
17 falling out with them. We're going to talk more about that
18 falling out later and why that's important.

19 But Ms. Erdely disregarded Jackie's behavior. And
20 when you're an investigative journalist -- she said she's a
21 pretty good judge of witnesses and characters -- you don't
22 just judge what they say; you judge what they do. You judge
23 their behavior and whether it makes sense in light of all the
24 other facts that you have. And her refusal -- Jackie's
25 refusal to put Ms. Erdely in touch with people who could

1 corroborate or deny her story was a giant, waving red flag.

2 Ms. Erdely and Rolling Stone recklessly disregarded
3 the fact that Jackie gladly and willingly provided
4 documentation for irrelevant stuff. That she worked at the
5 pool. Big deal. That doesn't prove anything. It proves she
6 works at the pool. It doesn't corroborate her story of a gang
7 rape. It doesn't make her a teller of truths.

8 But, again, when push came to shove and Ms. Erdely
9 asked for things that would actually corroborate her account
10 of what happened, Jackie refused or had a bunch of stories as
11 to why she couldn't that didn't make any sense.

12 The medical records for the syphilis diagnosis. We
13 heard just yesterday the audio and the changing stories, "Oh,
14 my mom has it. No, she doesn't. It's in my dorm room. No,
15 it's not. I don't have it." They never showed up.

16 Same thing with the dress and other things that were
17 asked for that would have directly corroborated what happened
18 that night.

19 And Ms. Erdely recklessly disregarded the fact that
20 Jackie and everyone else she spoke to -- look in the reporting
21 file for yourself -- told her she was dead wrong about Nicole.
22 But none of that mattered to Ms. Erdely. None of that
23 mattered to Rolling Stone. It didn't matter that Jackie was
24 emotionally fragile and, at some point, wanted to pull out of
25 the story.

1 And we will never know why. Maybe she realized that
2 this was getting bigger than she thought it was by talking to
3 Rolling Stone. Maybe she was having second thoughts about
4 having her name out there. Doesn't matter why.

5 Ms. Erdely and Rolling Stone knew that Jackie was
6 emotionally troubled, fragile, and intent on controlling her
7 own narrative. Those words come from her own file. But they
8 pushed her into staying involved.

9 I suspect you'll hear from Mr. Sexton, and we heard
10 from several witnesses, that they were ready to abandon Jackie
11 if her story -- if she pulled out; they were ready at a
12 moment's notice to do that. But no one in this case, with all
13 the documents and all the binders and all the exhibits, has
14 produced a single draft of an article or even a start of an
15 article with Stacy's case or any of the other cases at the
16 lede. It would have required a ton of work to start over at
17 that point.

18 And there's no evidence, other than uncorroborated
19 say-so, that they were willing to do it. You saw the text
20 messages for yourself. "Make no mistake, let me be clear,"
21 she said, "there's no pulling the plug at this point."

22 It didn't matter to Ms. Erdely or Rolling Stone that
23 Nicole was in a vulnerable position. It wasn't just Jackie
24 who was in a vulnerable position. Nicole, by virtue of her
25 position and by virtue of what she does for a living, is in a

1 vulnerable position. And I submit that that put a special
2 responsibility on Rolling Stone to make sure they got the
3 facts right.

4 Ms. Erdely knew that Nicole was prohibited by
5 federal privacy laws from talking about Jackie's case and
6 defending herself on any of the specifics. We've heard
7 reference to FERPA, and you saw the back and forth with the
8 UVa people about the privacy reasons why Nicole would not be
9 able to talk about specific cases. And you even saw that and
10 heard that in the interview with President Sullivan. There
11 are certain specific questions that she couldn't get into.

12 And Ms. Erdely also knew, and Rolling Stone also
13 knew, that Nicole's employer, the University of Virginia,
14 would not allow her to sit for an interview. She wanted to
15 sit for an interview. You saw the e-mails where she set up
16 the interview.

17 Nicole said, "Yeah, I'll be interviewed. I don't
18 have anything to hide." And she fought internally to be able
19 to sit down. Remember the e-mail that says, "I'm afraid if I
20 don't do the interview, it will look like we have something to
21 hide"? She wanted to do it, but she was prohibited by her
22 employer from defending herself.

23 Now, that's a decision that UVa made. And Nicole,
24 as a good soldier, went along with it. But it left her in a
25 vulnerable position for Rolling Stone and Ms. Erdely to say

1 things about her, because they had the power and she didn't.

2 These things, all of these things that I've been
3 talking about, should have caused Ms. Erdely and Rolling Stone
4 to more carefully check their story and verify facts with
5 people who had actual firsthand information. But they didn't.
6 They took advantage of Jackie. They took advantage of Nicole
7 in her vulnerable position. They made Jackie the victim, and
8 they made Nicole the villain, the face of indifference to
9 Jackie's claims.

10 Who were the folks that did this? These are the
11 people on the Rolling Stone side of the equation, and I'm
12 going to briefly explain who they all are, because we saw a
13 lot of different testimony and how they all fit together and
14 who these people are.

15 This is Jann Wenner. You heard his testimony. He
16 is the majority owner and chairman of Wenner Media, LLC, one
17 of the defendants in this action. He's the founder,
18 publisher, chief executive officer, and self-described boss of
19 the magazine.

20 Just like any boss, he sets the tone for the
21 organization. Leaders set the tone. And you had an
22 opportunity to see and hear for yourself the tone that
23 Mr. Wenner set for the organization.

24 The last thing you heard yesterday from Mr. Woods in
25 our rebuttal case, in the happily short examination that we

1 did of him, was that Wenner Media, together with Rolling
2 Stone, LLC, the other corporate defendant in this case,
3 publishes the magazine. So these two corporate entities,
4 together with one another, publish the magazine that comes
5 out.

6 Will Dana was the managing editor of Rolling Stone
7 at the time -- no more -- and an employee of Wenner Media at
8 the time it was published.

9 Sean Woods was the senior editor of Rolling Stone
10 and an employee of Rolling Stone when the article was
11 published.

12 And Liz Garber-Paul was the fact-checker. She was
13 an employee of Wenner Media.

14 And that's important because you're going to be
15 asked to evaluate who knew what, who had what information in
16 their possession that could have stopped this. And the fact
17 that these folks -- not Mr. Wenner, but the other folks that
18 are shown up here -- had that reporting file we've talked
19 about -- and the reporting file has got -- it's the keys to
20 the kingdom. It's got all of that information in there.

21 It wasn't just Ms. Erdely who had this information,
22 this contrary information and the internal inconsistencies and
23 all of those elements of it and wrote an article and sent it
24 over to Rolling Stone and Rolling Stone puts it up on the
25 website.

1 Some magazines work like that, but Rolling Stone
2 doesn't. Mr. Woods was involved in editing. You heard him
3 testify about how he was actually making the edits. I think
4 he said at one point he pushed the delete button and deleted
5 some text. And you saw all the handwritten markups that Liz
6 Garber-Paul made in terms of fact-checking.

7 These folks had the reporting file and all these
8 materials that we have been going through together and could
9 have stopped this, the corporate defendants.

10 Ms. Erdely was a contributing editor at Rolling
11 Stone. Now, she had a contract. She's an independent
12 contractor with Rolling Stone. And you'll see that in the
13 jury instructions, that she was a contractor, not an employee.

14 Now, as you heard the judge say, she is party to a
15 joint defense agreement and confidentiality agreement with
16 Rolling Stone, LLC, and Wenner Media. And under that
17 agreement, that joint defense agreement and confidentiality
18 agreement, Rolling Stone and Wenner Media have agreed to pay
19 her legal costs and fees in this case and to satisfy any
20 judgment and pay any damages assessed against her arising out
21 of the article.

22 The judge told you that you're entitled to consider
23 that relationship when evaluating the testimony of the
24 witnesses and evaluating their credibility, that cooperation
25 provision that exists in that joint defense contract between

1 them.

2 Now, Ms. Erdely and Mr. Woods are good friends. We
3 heard about that from Mr. Sexton at the beginning, and I think
4 we've seen that in the courtroom, and we've heard testimony
5 about that relationship.

6 Mr. Woods edited every single article that
7 Ms. Erdely ever wrote for Rolling Stone. And I'd like you to
8 consider whether or not a magazine should assign a friend to
9 be an editor of someone's work.

10 This is about journalism, after all. And what are
11 editors supposed to do? Editors are supposed to be skeptical.
12 They're supposed to be persnickety. They're supposed to be
13 hard-nosed. They're supposed to be questioning. They're
14 supposed to be probing and pushing and all of those things.

15 And that's hard to do with your friends. It
16 requires a certain distance. It requires a certain level of
17 separation for you to be able to say, "Hey, what you turned in
18 isn't good enough." And that's a hard thing to do for your
19 friends.

20 And then there's Mr. Ritter, the illustrator.
21 Rolling Stone, LLC, hired a professional illustrator, John
22 Ritter, to doctor that photograph of Nicole and put it in the
23 article.

24 So these are the players. These are the folks that
25 you heard from. Let's talk about how these folks set into

1 motion and how we got here.

2 Ms. Erdely and Rolling Stone set out from the very
3 beginning to write a story about institutional indifference.
4 You heard that word a lot. We argued about it a lot with the
5 witnesses. That's called having a preconceived storyline.
6 When you set out from the beginning to write a story and you
7 have in your mind what you want the end of the story to be,
8 that's a preconceived storyline. And here's why it's
9 important.

10 Once they decided what the article was going to be
11 about, it didn't matter what the facts were. Once they
12 targeted Nicole to be the villain and the face of
13 institutional indifference at UVa, it didn't matter that
14 everyone she spoke to said she was the furthest thing from a
15 villain that you can imagine. They disregarded those facts
16 and twisted the ones that they did have in order to make her
17 look bad.

18 And I will show you later in my remarks how they
19 took the positive information and twisted it in the article
20 with a negative spin. Every positive thing they said about
21 her in the article, echoing back some of the positive things
22 that they heard, was twisted to make her look like a villain.
23 It was done in a very clever way, and it was done very
24 intentionally.

25 Now, here in the courtroom, at the very beginning of

1 this case, very early on, you heard Ms. Erdely claim and tell
2 you this article was not about institutional indifference.
3 That's what she said right here on the witness stand. But the
4 article itself contradicts that testimony. "You can trace
5 UVa's cycle of sexual violence and institutional indifference
6 back at least 30 years and, incredibly, the trail leads back
7 to Phi Psi."

8 You can also find that preconceived storyline in
9 Ms. Erdely's internal comment to her good friend Sean Woods in
10 the first draft of the article that she turned in. She's
11 asking the question -- this wasn't published, but it helps you
12 to get in the mind, as Mr. Sexton said, of what these folks
13 were thinking about what this article was.

14 She asks, "End on a different note? The point?
15 What's the point of all of this? That despite the lip service
16 given to rape at UVa and at colleges nationwide, in reality,
17 the combination of a rape-tolerant student body and an
18 indifferent administration creates a collegiate environment
19 that's a free-for-all for sexual predators."

20 That was the point that she was trying to get across
21 here and wanted to make sure it was emphasized in the article.
22 So her testimony this article was not about institutional
23 indifference is rebutted by her own words in the first draft
24 of the article.

25 What happened when she was asked to talk to the

1 Washington Post about what the story was about? She writes to
2 the Washington Post, "As I've already told you, the gang rape
3 scene that leads the story is an alarming account that Jackie,
4 a person I found to be credible, told me, told her friends
5 and, importantly, what she told the UVa administration, which
6 chose not to act on her allegations in any way, i.e., the
7 overarching point of the article."

8 "Chose not to act on her allegations in any way."

9 Remember the police.

10 She said that is the overarching point of the story.
11 "That is the story," she writes, "the culture that greeted her
12 and so many other women I interviewed who came forward with
13 allegations only to be met with indifference."

14 Who did that greeting? Who met her claims with
15 indifference? In the article the only person who interacted
16 with Jackie was Nicole.

17 So make no mistake, the defendants here decided this
18 article was going to be about institutional indifference
19 before they began investigating, and they were going to stick
20 to that story no matter what people said about Nicole.

21 And it wasn't just Ms. Erdely. Wenner Media and
22 Rolling Stone knew they were working with someone who was
23 going to write this story. Remember all the other articles
24 that we went through at the very beginning, including "The
25 Rape of Petty Officer Blumer" that has this same villain,

1 victim, vindicator theme?

2 They knew they were working with a reporter who was
3 going to give them a high-impact story about institutional
4 indifference to sexual assault, and they approved it in
5 advance.

6 Remember the pitch document that was presented?
7 Ms. Erdely wrote it; Mr. Woods was consulted on it; it was
8 presented to Will Dana and Jann Wenner for approval before
9 anything had gotten started.

10 The pitch expressly talks about institutional
11 indifference. And, in an eerie forecast of the rape school
12 statistics quote, the pitch talks about how she wants to look
13 at the various ways colleges have resisted involvement and
14 juked their stats to make their campuses appear safer than
15 they are.

16 This was before a single fact about UVa was known to
17 anybody. Institutional indifference and juking stats. Sent
18 over to the corporate folks and approved as the pitch for the
19 story.

20 And that mindset of looking for institutional
21 indifference affected every aspect of what happened
22 afterwards. She selectively included facts in the article
23 that supported that preconceived storyline, even if it didn't
24 fit, and intentionally rejected other facts that contradicted
25 them.

1 Columbia talked about this, the phenomenon of
2 confirmation bias. "The problem of confirmation bias, the
3 tendency of people to be trapped by preexisting assumptions
4 and to select facts that support their own views while
5 overlooking contradictory ones, is a well-established finding
6 of social science. It seems to have been a factor here."

7 And it was. It was reckless. It was reckless
8 disregard for the falsity of what they were writing.

9 When you're looking for something, you're going to
10 find it. And when you're excluding things that don't support
11 that, that's recklessness. That's intent. And it's powerful,
12 powerful evidence of the actual malice here.

13 You've heard me say it several times that, instead
14 of listening to her sources and writing what her sources tell
15 her, which is what journalists do, Ms. Erdely is the one who
16 did most of the talking and pushing her own views on these
17 subjects, on these young men and women.

18 You'll see in her reporting file with Alex
19 Pinkleton, where she was prompting her sources to vent about
20 the administration, she says, "She was candid about her
21 experience to me, and she wasn't down on the administration at
22 all, even when prompted to vent."

23 Even when she was encouraged to vent about the
24 administration, Alex Pinkleton wouldn't. And Ms. Erdely made
25 a note of that.

1 But why is a reporter prompting sources to vent?
2 Hey, is there any bad stuff you want to say about the
3 administration? Is there any bad stuff you want to say?

4 How about just listening to what people say and
5 write down the facts that they tell you? That's journalism.
6 This is push polling.

7 Ms. Erdely's sources finally got worried enough that
8 Nicole was being unfairly targeted over the course of these
9 interactions, and Ms. Erdely didn't even try to hide that fact
10 from them.

11 "Is this going to make Dean Eramo look bad?"

12 She says, "I mean, it might, you know. It might
13 make her look bad."

14 We heard it in her own voice on the audio.

15 (Audio played)

16 That's what she was telling these young women.

17 But even when Ms. Erdely continued to push her
18 sources with her own views about what was okay and not okay
19 about their experiences, her sources, these young men and
20 women, wouldn't take the bait.

21 Here's the reporting file. Here's what Ms. Erdely
22 says:

23 "I know people tend to love her. She sounds very
24 nice. And, yes, I guess I asked because the picture that's
25 being painted by survivors is that after reporting to her,

1 they often didn't get adequate mental health treatment. They
2 didn't report to police. They were offered informal
3 mediations. It's not clear to me that this informal hearing
4 is even okay under Title IX.

5 "Really?

6 "You were satisfied with it in your case.

7 "I don't think I would have been satisfied with the
8 formal, so the informal option was the best one for me."

9 When Ms. Erdely was telling these folks about what's
10 best for them in terms of how their own intimate sexual
11 assault should be handled, these folks pushed back and said,
12 "You know, not for me. I'm the one that has to sit in that
13 room across from my attackers if I were to pursue a formal
14 claim. I'm the one that would have to sit on a witness stand
15 in a criminal prosecution. That's not for me."

16 Ms. Erdely is entitled to her view on victim choice.
17 She's entitled to it. Everybody is entitled to their
18 opinions.

19 But what you can't do is make up facts in support of
20 your opinion, and that's what happened here.

21 And the sources, the actual real people, the real
22 UVa students that she talked to, wouldn't play along. They
23 said, No; this is what we want, and this is empowering for us,
24 and this is how Nicole helped us build trust and helped us get
25 to the point where we were healthy enough to be the vibrant

1 young women and men that you saw here testifying and on video.

2 Ms. Erdely also tried to convince Jackie that Nicole
3 was keeping survivors quiet with comfort. She says, "I wonder
4 if she's counseling survivors but also in a sense that comfort
5 she's giving them is also keeping them quiet."

6 It's not a question. It's a statement.

7 Jackie doesn't take the bait. Jackie talks about
8 her experience, about how she's not ready.

9 And there came a point in time, after all of those
10 long audios that we heard, the hours and hours of audio and
11 the country music playing in the background, where even the
12 most minute portions of that dinner, those dinners, were
13 recorded on tape.

14 I was laughing yesterday. I heard Connor ordering
15 water and the check comes. And you hear all that detail of
16 those audio. But there came a point in time where Ms. Erdely
17 did something extraordinary. She turned the recorder off to
18 trash Nicole to these young women and men who were there. And
19 she wrote about this in her notes.

20 And, as she told you, she didn't expect these notes
21 would be played in a courtroom someday. These were to
22 herself. She said, "I turned the recorder off and tell them I
23 do think there have been some legit worries and issues that
24 have been raised that may not reflect well on the
25 administration, of which Dean Eramo is the most public face

1 because she's the one who deals with the students, because I
2 do have some questions about whether Jackie's case had been
3 handled properly. Recorder on."

4 Why would you turn off the recorder and leave it on
5 for all the rest of the portions of the dinner? Why would you
6 turn that off, unless you didn't want your voice to be
7 recorded saying those things about saying -- pushing her views
8 and trashing Nicole like this on tape?

9 I think it's telling that she turned the recorder
10 off. And her explanation for it on the stand when Mr. Sexton
11 asked her about it was, "Well, sometimes when I'm doing an
12 interview and I'm going to go on at length, I don't want to
13 transcribe it later, so I turn the recorder off."

14 That just means that she was going to go on at
15 length about Nicole and about trashing Nicole. It proves our
16 point.

17 Sometimes, though, she wasn't so careful. Sometimes
18 she couldn't filter her contempt for Nicole and her strong
19 feelings about how Jackie's case was being mishandled. Bear
20 in mind, that's not what anyone else was telling her. That's
21 not what Jackie was telling her. Jackie was saying, "I love
22 Nicole. She's my advocate. She's doing what she's supposed
23 to do."

24 But sometimes Ms. Erdely could not filter that
25 contempt, and you heard her on tape.

1 (Audio played)

2 Now, reporters, journalists, occupy a special place
3 in our society. They do important work. But in order to do
4 that work, you have to maintain some objectivity, some
5 distance from the stories that you're reporting on.

6 Now, they're human and they get invested in their
7 stories too. But that's when there's risk of publishing false
8 statements, when you're so invested in a story that you're
9 blinded to other facts.

10 And she had a responsibility, if she could not be
11 objective about Dean Eramo, to back off of this. She didn't.

12 And during that September 12th dinner that we heard,
13 Ms. Erdely recorded herself telling sources that Nicole was
14 not doing right by them and putting the UVA community at risk.

15 Again, this is a reporter telling sources, the
16 people that she's going to report on in the story, that. She
17 says, "I think Dean Eramo seems like a wonderful person, and I
18 know you guys all really love her, but I think that it's not
19 totally clear she's actually doing right by you. I actually
20 think she's probably, like, mishandling this whole situation.
21 She's putting an entire community at risk."

22 And it wasn't just her sources. It wasn't just
23 these young men and women that she had an opportunity to talk
24 to her views on. These critics that are quoted in the
25 article.

1 Laura Dunn is a name that appears in the article and
2 we heard some testimony about. You heard Ms. Erdely admit on
3 cross-examination that she had never met Nicole and she didn't
4 know anything about Jackie's case. Everything that Laura Dunn
5 knew about this situation that Sabrina was talking to her
6 about came from Sabrina. And in the --

7 (Audio played)

8 Everything that she knew about it, that did not stop
9 Ms. Erdely from saying that Dean Eramo rubbed her the wrong
10 way, telling this critic -- this, you know, I'm not going to
11 say expert, but telling this consultant, this person that she
12 was asking for opinions on, "I'm the reporter, and I'm calling
13 up someone. I'm asking for them to tell me what they think."
14 And let me start out the conversation by telling you, "Eh,
15 this Nicole Eramo person rubbed me the wrong way, and it feels
16 like she's coddling these survivors."

17 That's what Sabrina tells to Laura Dunn. And is it
18 any wonder then that the same quote, "coddling survivors,"
19 appears in the article?

20 But perhaps the most candid example of Ms. Erdely
21 saying -- making clear that it's her, it's Ms. Erdely, is the
22 one who was actually expressing these views that came in the
23 September 12th dinner, she tells her sources, Alex, Sara and
24 Jackie, that, "Hey, it can be me. I know you guys aren't
25 saying this, but it can be me saying Nicole isn't doing her

1 job."

2 (Audio played)

3 "I mean, you guys have never said anything to that
4 effect." That's what she tells Alex and Sara and Jackie.

5 But let's contrast that with what she tells
6 President Sullivan during the interview.

7 She says, "So another thing that I'm sort of hearing
8 from these girls, from these girls who come in -- they love
9 Dean Eramo -- they leave Dean Eramo's office kind of paralyzed
10 from the lack of guidance."

11 She's lying to President Sullivan. She said, "I'm
12 hearing this from the girls."

13 We just saw her say, "You guys have never said
14 anything to that effect." But she tells President Sullivan
15 she's hearing this from the people, the girls, who are the
16 sources for her article.

17 All of this violates Journalism 101.

18 (Audio played)

19 This violates Journalism 101. Reporters report the
20 facts as they find them. They don't create the facts. They
21 report what the sources tell them. They don't push their
22 views on sources, especially when those sources are college
23 kids who are eager to talk to them and report their story,
24 tell their story. Reporters don't turn off their recorders to
25 go on lengthy rants about the targets of their articles. They

1 don't misrepresent their own views as something that other
2 people told them in order to generate a comment.

3 But that's exactly what she did here. Those actions
4 and the preconceived storyline that motivated them are
5 powerful, powerful evidence of actual malice, and you should
6 consider all of them in evaluating the mindset that went into
7 publishing this article and investigating.

8 But President Sullivan wasn't the only one who heard
9 one thing from Ms. Erdely and then it turned out to be
10 another. She also deceived some of these other college kids
11 who agreed, under false pretenses, to serve as sources.

12 You heard directly from Brian Head, the president of
13 One in Four. He spoke to Ms. Erdely for one and a half hours
14 about his work with One in Four, that all-male student-run
15 sexual assault prevention and advocacy group at UVa.

16 That's something, the fact that there's this
17 all-male group. And all the things that Brian Head had to say
18 in the hour and a half that he spoke to them would paint a
19 balanced picture of this college environment that she was
20 trying to portray. But in the article, he was reduced to a
21 fourth-year student who said, "The most impressive person at
22 UVa is the person that gets straight As and goes to all the
23 parties." He was reduced from being the president of One in
24 Four to a party guy.

25 You heard directly from Emily Renda, an incredibly

1 impressive young woman, who spoke extensively to Ms. Erdely
2 about her own experiences advocating about sexual assault
3 issues on campus. And she told Ms. Erdely that Nicole was
4 very passionate about getting Phi Psi punished and doing
5 something punitive that would make something stick. Emily
6 Renda told Sabrina that.

7 But in the article, Emily was reduced to a rape
8 victim who, quote, channeled her despair into hard partying
9 and often ended her nights passed out on the bathroom floor.

10 Maybe one of the saddest things was when Emily
11 testified about how this whole experience, about going through
12 this and telling her story and then seeing how it played out
13 on a national stage, caused her to rethink what she wanted to
14 do with her life, the experience of serving as a source and
15 reading about it about how it affected her, this very
16 impressive young woman.

17 You heard from Alex Pinkleton, who also spoke with
18 Ms. Erdely extensively about One Less and her own experiences
19 with Nicole. She told Ms. Erdely that Nicole had empowered
20 her. But Rolling Stone reduced her to a girl expertly clad in
21 a midriff-bearing crop top and giving advice on how to look
22 drunker than you are in order to get into the frat parties.
23 Alex told you how she felt about this.

24 She said, quote, "I was talking to Sabrina as an
25 advocate. That's who I am 90 percent of the time. 10 percent

1 of the time I might be going out and I might be in a crop top.
2 So clearly she was trying to paint me as someone that I
3 wasn't, or I was at some times, but that's not who I was when
4 I was talking to her. I'm not expert on how to get into a
5 frat. I can get into one. But I consider myself more of an
6 expert on how to help survivors, and that was my main goal."

7 None of that made it into the article. And that One
8 Less organization, that we've spent way too much talking about
9 in this case, gets portrayed in the article -- instead of what
10 it really is -- a group of young women who have banded
11 together to support one another -- it gets painted as
12 something negative. It gets painted as folks who sit around
13 and affirm their own choices not to report and echo what the
14 administration is telling them, that doing nothing is a fine
15 option.

16 They did an incredible disservice to the young women
17 who run this organization and Nicole, who advises them.

18 You heard from Sara Surface, who spoke extensively
19 about One Less advocacy and her own experiences with Nicole.
20 But Ms. Erdely dismissed her as a mouthpiece of the
21 administration.

22 Now, why would you say that? Why would you describe
23 someone, a college student, as a mouthpiece of the
24 administration? Because she felt that her storyline was
25 getting pushback. Sara was pretty aggressive in pushing back,

1 and she was dismissed as being a mouthpiece of the
2 administration.

3 Consider whether or not she was being sincere in
4 relaying her own personal experiences. She was dismissed.

5 And there are others, other sources that we heard
6 some about, ignored other information in the article. Sandra
7 Menendez, who told Ms. Erdely that Nicole wanted to remove her
8 attacker from the university and pursue a no-contact order.
9 She wasn't interested. She just wanted counseling.

10 But this notion that Nicole is not giving women
11 guidance and not giving women real options to pursue justice
12 against their attackers was left on the cutting room floor.
13 These were intentional decisions that were made.

14 This was -- the reporter has the ability to craft a
15 story and decide what to cut and what not to cut. And you
16 can't cut all of these experiences and have it be an accident.
17 It was done intentionally, to meld that preconceived story
18 line.

19 Emily Loranger told Ms. Erdely that, after she was
20 groped at a concert, Nicole got it sent to an investigative
21 team that did a very thorough investigation, as thorough as
22 they could.

23 Two other individuals, Will Cadigan and Tommy Reid,
24 who Sabrina dismissed as being a tool, went out of their way
25 to tell her how impressed they were with Dean Eramo, like

1 everyone else.

2 Now, reporting honestly on what these young men and
3 women, the sources for her story, told her about UVA and about
4 Nicole Eramo would have undermined that villain part of the
5 story. They needed this institutional indifference and they
6 needed a face. Instead, she ignored that positive information
7 and twisted it into being negative. Defendants, all of them,
8 made an intentional decision to build the entire lede of the
9 story around Jackie.

10 In writing an article, writing a term paper or a
11 thesis or a legal brief or anything, there's a process
12 associated with it. And there's a foundation for it.

13 You heard Mr. Woods talk to us a little about some
14 journalism terms, about the lede of the article. L-E-D-E, I
15 think, if I got that right. That's the foundation of the
16 article. Everything else that comes from it is built on that
17 foundation.

18 And look for yourselves at how Jackie's story weaves
19 through the entire article. It wasn't just the very beginning
20 of the article. The article keeps coming back to Jackie to
21 make different points over the whole article. And especially,
22 it keeps coming back to Jackie's interactions with Nicole as
23 various things happen in the article. Jackie's story was the
24 foundation.

25 And just like a house, if it has a faulty

1 foundation, if the foundation has a crack and the foundation
2 is flawed, the rest of the article is flawed. The rest of the
3 house cannot stand if the foundation is flawed. And they made
4 a decision to have Jackie's story, with all of its inherent
5 improbability and all of its internal inconsistencies, be the
6 foundation for all of this.

7 The Columbia Journalism Review said this. They said
8 Rolling Stone invested the reputation of the magazine on a
9 single source.

10 It wasn't an accident. They knew it. They talked
11 about it. They did it deliberately.

12 We could spend weeks -- and I promise I'm not going
13 to -- rehashing all of the giant red flags that were ignored
14 here. I'm going to just touch on a few.

15 "Jackie morphed her story over time." Those are
16 Ms. Erdely's words. Jackie's story had morphed over time,
17 from the number of men to the kind of rape to the object she
18 was raped with.

19 These are all the different sources that Rolling
20 Stone had: Emily Renda, vaginally raped by five men. Rachel
21 Soltis, oral sex on several men, vaginally raped by six men
22 with a broken beer bottle. Jackie, vaginally raped by seven
23 men, unbroken beer bottle. And Annie Forrest, vaginally raped
24 by several men with a coat hanger.

25 Now, again, we don't know why Jackie's story

1 changed. And trauma victims' stories might change. But who
2 is the adult in the room? Who's the reporter who is trying to
3 decide what facts to put in a national magazine?

4 Ms. Erdely tried to explain these morphing stories
5 as being consistent with trauma, so she believed them. But
6 she never explained -- and there is no explanation -- for how
7 she decided, as an investigative reporter who is supposed to
8 be reporting the facts of what happened, how she decided which
9 of these accounts to tell.

10 She never asked Jackie, she never asked any of her
11 friends, whether the differences really were as a result of
12 trauma or were the symptoms of a false story. She never asked
13 the question.

14 And remember in that jury instruction that internal
15 inconsistencies -- and if you have reason to believe that
16 there are inconsistencies in a story, as she did -- because
17 this is all in her reporting file -- you have an obligation to
18 go further.

19 Back to the red flags.

20 Red flag number two: Jackie refused to identify
21 corroborating witnesses. Jackie repeatedly refused to provide
22 her with the names or contact information for anyone who could
23 corroborate or dispute what Jackie was claiming, the
24 attackers, the three friends, and the two women that Jackie
25 claimed had been gang-raped at Phi Psi: Maddie and Becky.

1 They tried to explain that away too, saying, well,
2 Jackie didn't want her attackers to be contacted, and the
3 friends had had a falling out, and that there were these
4 screenshots of text messages that had Jackie's name at the top
5 that Jackie said were from Becky and Maddie, two people who,
6 to this day, there's no evidence who they are, that has been
7 submitted to you. That's a huge red flag, Jackie's behavior
8 in not providing access to these people. And they knew it.

9 Liz Garber-Paul, the fact-checker, said, in response
10 to a question from Mr. Phillips: "This is common sense," the
11 question said. "If a source tells you, 'I don't want you to
12 contact this person,' that should be a lightbulb in your head
13 telling you, I better contact this person and see why my
14 source doesn't want me to. You would agree with that, right?"

15 And Ms. Garber-Paul said, as she must, "Yes."

16 That's journalism. That's being skeptical. That's
17 what investigative reporters are supposed to do. Why is my
18 source behaving this way? Are there many, many, possibly
19 multiple, reasons why my source is behaving this way? Should
20 I explore whether or not she's keeping relevant information
21 from me? And that's true whether the subject of the article
22 is rape or anything else.

23 The fact that this story was about rape does not
24 change the way a journalist should do their story. You saw
25 Ms. Erdely's own statement was introduced into evidence, the

1 one she was working on, where she talks about how, even when
2 you're reporting on rape, it requires diligence and patience
3 and skepticism. There's nothing different about reporting on
4 this. Journalism doesn't go out the window because of the
5 subject matter that you're writing on. Journalism is hard,
6 but it requires you to do the work.

7 Back to the third red flag: Jackie withheld
8 physical evidence. She kept promising but then withholding
9 the physical evidence that would have helped corroborate or
10 debunk that account. Medical records about the syphilis; the
11 bloody, torn dress that she claimed to have been wearing on
12 that night.

13 And then we have Ms. Erdely's own firsthand
14 observations. You heard the recording of Ms. Erdely's own
15 voice, where she said that the injuries from the bottle
16 incident, "Wow. That looks like face paint." And that
17 observation appeared in her own reporting file, which the
18 other folks, Wenner Media and Rolling Stone, had in their
19 possession before the article was published.

20 But there are other firsthand observations that are
21 important here too. The story that Ms. Erdely chose to put in
22 the magazine was a horrific one. It was hard to read. It was
23 graphic, and it was detailed. Remember when I made my opening
24 remarks, I put up all those words on the screens, the factual
25 things of what happened.

1 There was a glass coffee table. Jackie said she
2 ended up crashing into it, and it shattered under her weight.
3 "I tripped and fell against the coffee table, and it smashed
4 underneath me. And there was another boy who was throwing his
5 weight on top of me. I was flailing my arms when I got in
6 there, and he slammed my arm up against the full board, and
7 they were cut up with glass. And he was so heavy, I couldn't
8 move my arms. Seven of them raped me. And the other two
9 stood. It went on for almost three and a half hours. I was
10 laying on the broken glass table the whole time. My dress was
11 soaked with blood. The glass went into my back. I have scars
12 from it. I have scars on my back. My friends are always
13 like, what are those from? And I'm like, they're from
14 September 28, 2012."

15 Now, put aside the common sense reaction that if
16 this had happened as Jackie described, what kind of physical
17 condition would she have been in that night when she ran out
18 to meet those three friends? Talking to those three friends
19 and validating this blood-soaked dress and bleeding arms and
20 glass shards digging into the back would have been an
21 important way to validate those things.

22 Ryan and Kathryn testified that Jackie was shaken
23 but didn't have any of these physical injuries that would have
24 been manifest from this sort of an injury. The scars that
25 Jackie talked about and said all of her friends had seen would

1 have been an incredible, powerful corroborating fact. But
2 when Ms. Erdely brought up the scars over dinner two months
3 later, Jackie's boyfriend, Connor, said he had not seen any
4 marks on Jackie's back. In fact, none of the friends that
5 Ms. Erdely spoke to had ever seen any scars on her back.

6 She asked those questions too late, after the
7 9,000-word article was already out there. Why haven't your
8 friends seen the scars on your back?

9 And whether Jackie was lying intentionally or
10 whether she was misremembering or whether she had some other
11 kind of trauma at some other point in her life, came to
12 college with, or something else had happened to her at
13 college, the physical evidence proved that what Jackie was
14 telling her was not plausible or reliable. And all this was
15 in the reporting file.

16 Sean Woods, after the fact, when he did look at the
17 reporting file -- remember he said, "It's not usually what I
18 do. It's not my job to look at the reporting file when I'm
19 editing the story and supposed to be making skeptical remarks
20 on what was and was not included in the article" -- he said,
21 "After the fact, when I looked at it," he saw a pattern of
22 deception in Jackie's story.

23 "Q As you discovered, after reviewing
24 the reporting file, that you came to see a
25 pattern in Jackie's behavior; isn't that

1 correct?

2 "A It wasn't just the reporting file. I
3 was looking at everything and all the events.
4 But, certainly, the reporting file influenced
5 my thinking, and I did see a pattern.

6 "Q And that pattern is that she was, in
7 fact, intent on controlling her own narrative;
8 isn't that right?

9 "A Yes. And beyond that, I began to see
10 a pattern of deception."

11 With all of these red flags glaring and apparent
12 from the reporting file, Ms. Erdely and Rolling Stone built
13 the foundation of the story about Nicole based on Jackie's
14 say-so.

15 Look at all of the things that come strictly from
16 Jackie that are critical to this story, that are solely based
17 on Jackie.

18 We have her say-so that Drew or Tom or Jay, the
19 ringleader, was a real person who was a Phi Psi brother who
20 worked as a lifeguard and orchestrated this brutal gang rape.

21 The very first question that Liz Garber-Paul asked
22 Ms. Erdely when she was assigned to do the fact-check was
23 whether Sabrina had gotten comment from him. That was the
24 very first question that appeared to this experienced
25 fact-checker. Did we get a comment from this guy, the

1 ringleader? That's Journalism 101. Did we tell him what
2 we're about to say about him?

3 Now, had Ms. Erdely or the fact-checker or Rolling
4 Stone or Will Dana or Sean Woods or anybody in the equation
5 taken this one simple step, either making sure they knew who
6 this guy was or requiring Jackie to identify him as a
7 condition of her story being included, none of us would be
8 here today. They would have quickly discovered what Ryan
9 Duffin, a college kid with zero investigative journalism
10 experience, discovered on his own over fall break when he was
11 trying to figure out why Jackie's story didn't make sense, is
12 that this person didn't exist.

13 Ms. Erdely and Liz Garber-Paul spoke to Mr. Woods
14 after the fact about this fact, that they had not located,
15 identified, or spoken with the ringleader, but they decided to
16 publish the story anyway.

17 We have our good friends Armpit and Blanket, the
18 other two fraternity members. They relied on Jackie's say-so
19 that there were two Phi Psi pledges that had these nicknames.
20 They chose not to ask anyone whether anyone in Phi Psi or the
21 pledge class had those nicknames.

22 Those are pretty distinct nicknames. How many guys
23 do you think in a fraternity have the nickname Armpit? Maybe
24 there's more than one, but at least ask the question.

25 And you heard how Ms. Erdely, when she came to

1 campus, concocted this excuse of having to go to the bathroom
2 to get into the Phi Psi house -- she wanted to see it for
3 herself -- but never -- despite going onto their property
4 under false pretenses, never asked the question about whether
5 there was an Armpit or a Blanket or somebody who was in
6 Jackie's anthropology class, another fact that's included in
7 the story. They relied on Jackie's say-so for this.

8 Same thing with the person who allegedly said in a
9 roomful of people, "Grab its motherfucking leg." They did
10 nothing to confirm that quote that attributed a truly inhumane
11 sentiment to someone at Phi Psi, as well as the notion, "Don't
12 you want to be a brother?," this somehow suggestion that this
13 was a ritualized thing at Phi Psi. No questions about that.
14 All based on Jackie's say-so.

15 These are facts that were reported as facts in the
16 article. Journalism 101. Got to verify it. Didn't happen.

17 Relied solely on Jackie for Randall or Ryan Duffin.
18 They took Jackie's word that her friend -- or former friend --
19 Ryan/Randall didn't want to talk, citing loyalty to his own
20 frat. That just makes it extra-nefarious, that somehow Ryan
21 doesn't want to talk because he's a frat guy.

22 Now, had Ms. Erdely or the fact-checker taken one
23 simple step, either finding him or requiring Jackie to
24 identify -- and Jackie knew who he was. If she had taken that
25 step as a condition of Jackie including her story in the

1 report, none of us would be here today. And she also would
2 have discovered a whole bunch of other stuff if she had found
3 Ryan Duffin.

4 Remember that bizarre story about Haven Monahan,
5 which I don't even have time to get into. But it was a
6 totally different story. It was a guy in her chemistry class,
7 a guy named Haven. He was an upper classman. He didn't
8 exist. He was texting with Ryan and trying to get Ryan to
9 like Jackie. If she had found Ryan and Ryan had told any of
10 these experienced investigative journalists any of these
11 things, we wouldn't be here.

12 They also took Jackie's say-so about Cindy/Kathryn
13 Hendley. They took her say-so that Cindy, one of the women --
14 the woman, the only woman, but one of the friends that had
15 come to Jackie's aid that night, had mocked her with this
16 horrendously callous statement, "Why didn't you just have fun
17 with it?"

18 That's a horrible thing to attribute to this young
19 woman. She would have denied it. And, remember, this isn't
20 one where she had to find this woman. She had her name in the
21 reporting file, and she was talking with someone who knew her.
22 I'm going to come back to that in a minute.

23 Alex Stock, another person she took Jackie's say-so
24 on. Alex is the one who is reported as saying to Jackie,
25 "Hey, you've been a baby ever since this experience." Another

1 callous quote.

2 And then there's Becky and Maddie. Rolling Stone
3 and Ms. Erdely accepted Jackie's say-so and screenshots of
4 text messages that had Jackie's name on them that Becky and
5 Maddie were real people and that they were unwilling to
6 comment.

7 And, importantly, they also relied on Jackie's
8 say-so for the inflammatory and false rape school quote, which
9 Nicole never said and the defendants never verified.

10 Ms. Erdely and Liz Garber-Paul did not contact any
11 of these people before the article was published. They hadn't
12 even confirmed that most of them even existed, and Sean Woods
13 knew that those steps had not been taken. Instead of speaking
14 to people with firsthand information, which is what reporters
15 do, people who observe things with their five senses --
16 Journalism 101 -- they published gossip.

17 They took Jackie's say-so and they used as
18 corroboration evidence people who Jackie had told these
19 stories: Emily Renda, Pinkleton, Sara Surface, Rachel Soltis.
20 None of these women had firsthand information about what
21 happened to Jackie.

22 The people on the slide I just showed you, the
23 people that had that firsthand information, everything those
24 people knew about what happened that night comes back to
25 Jackie. She was the sole foundation. She was the base of it,

1 and they knew it. They knew it was all single-sourced to
2 Jackie. They knew it. They knew that none of these people
3 had firsthand experience. They knew all of these people had
4 heard the story from Jackie. And they knew that Jackie did
5 not want them to speak to anyone who was actually there that
6 night.

7 I want to show you again on the three friends,
8 Kathryn Hendley. Ms. Erdely sat here under oath and told you
9 that she could not find Kathryn Hendley because she had
10 overlooked Kathryn Hendley's name in her reporting file.

11 Really? Before you accuse seven men of gang rape,
12 before you accuse someone of covering up a brutal gang rape
13 and suppressing it, you don't know what's in your own
14 reporting file? You're a journalist. That's Journalism 101.

15 It's reckless. It's reckless disregard of the
16 information in her possession that would have led this to a
17 different conclusion.

18 And Mr. Woods, to his credit, was asked:

19 "Q Isn't it fair to say that a
20 reporter's job is to know what's in her
21 reporting file?

22 "A I think that's fair."

23 And in a similar moment of candor, the fact-checker,
24 Liz Garber-Paul, admitted the truth, that the avoidance of
25 Kathryn Hendley wasn't just an oversight. They knew they had

1 a pathway to find Kathryn Hendley. Ms. Erdely told the
2 fact-checker that Rachel Soltis, one of the sources, knew
3 Kathryn Hendley.

4 "Q So Ms. Erdely confirmed to you that
5 Ms. Soltis knew Kathryn Hendley?

6 "A Yes."

7 And yet rather than asking Rachel Soltis to put them
8 in touch with Kathryn Hendley, the woman who they said, "Why
9 don't you just have fun with it, a bunch of hot Phi Psi
10 guys?," how did they use their time with Rachel Soltis?
11 Instead of saying, Can you put us in touch with one of these
12 three friends that we've been desperate to find, whose name is
13 in our reporting file -- and now they've got a source, they've
14 got someone who knows her. How did they use their time with
15 her?

16 They chose to spend their time asking Rachel Soltis
17 about how many men Kathryn Hendley had slept with so they
18 could portray her as a hook-up queen in the magazine without
19 ever contacting her.

20 Those are deliberate choices of journalism, of where
21 to investigate and where not to investigate, about what facts
22 to include in the article and what facts not to include in the
23 article. This isn't negligent. These were deliberate
24 decisions that were made by Ms. Erdely that were known to the
25 fact-checker and that were blessed and approved by the editor.

1 Kathryn would have told them, if they had bothered
2 to do any of these things, Jackie has kind of a tendency to
3 fabricate things.

4 That's purposeful avoidance of these friends who
5 Jackie told her she'd had a falling-out with.

6 There's that lightbulb that Ms. Garber-Paul told us
7 about. It should have been a lightbulb that she needed to
8 talk to these people.

9 Kathryn Hendley also would have told them that the
10 scene depicted in the article of the meeting afterwards was
11 inaccurate and that she had never described herself as a
12 hook-up queen.

13 "Q Did you ever, in fact, ask Jackie why
14 she just didn't have fun with being gang-raped?

15 "A No, I did not."

16 This is a violation of Journalism 101. As the
17 Columbia Journalism Report found, these things are not
18 advanced investigative reporting tactics. They said, "The
19 failures of reporting effort involved basic, even routine,
20 journalistic practice, not special investigative effort. And
21 if these reporting pathways had been followed, Rolling Stone
22 very likely would have avoided trouble."

23 Ms. Erdely's own documents, when she was trying to
24 get people to cooperate, she admits that she had a
25 journalistic obligation to do some of these things. She

1 admits, "Either way, I do need to reach out to him" -- talking
2 about Jay. "Either way, I do need to reach out to him to see
3 if he wants to comment. It's part of my obligation as a
4 journalist."

5 She knew it. She's an experienced journalist,
6 knowing what that obligation was and knowing that it had not
7 been followed through in this case.

8 Now, in court, these folks are saying they had no
9 doubt whatsoever about Jackie's credibility. They found her a
10 hundred percent reliable despite these things. They say, We
11 had no doubt and we weren't worried.

12 But, again, I go back to what I said at the
13 beginning. If you want to know what someone was thinking,
14 what did they say and what did they do at the time?

15 Sean Woods, on behalf of Rolling Stone and their
16 contributing editor, Ms. Erdely, had this exchange not long
17 before the article was published. Sean Woods said, "I worry
18 that we can't confirm the two girls coming to Jackie and
19 alleging gang rape at the same frat."

20 "I worry." That is subjective doubt and concern
21 about a single source.

22 Ms. Erdely says, "I have the same worry. I wish I
23 had better sourcing for a lot of the Jackie stuff. A lot
24 right now is resting on Jackie's say-so, including the entire
25 lead."

1 They knew Jackie was the sole source. They knew she
2 had these credibility and reliability problems. And they --
3 in a draft, Ms. Erdely admitted, she said, "I asked myself at
4 the time" -- meaning prior to publication -- "if it was wise
5 to build the opening of a story around someone who seemed so
6 emotionally fragile."

7 If you have to ask yourself that question, is it
8 wise, am I doing the right thing here, if you ask yourself
9 that question, you need to do more to make sure you're
10 satisfied and to make sure that you get the facts right.
11 Because they have enormous power to publish these stories to a
12 national and global audience. And before you hit that print
13 button and before you send out a glossy color magazine with
14 photo illustrations to millions and millions of people, you
15 got to get it right.

16 Here's that quote that I just read to you.
17 Ms. Erdely asked if it was wise to build it around someone who
18 seemed so emotionally fragile. Sean Woods, when he was
19 editing the statement, added in, "intent on controlling her
20 narrative."

21 They knew prior to publication about -- that Jackie
22 was intent on controlling her narrative. They knew this
23 behavior that I've talked about -- not what she said, but what
24 she did and how she acted -- they knew this was worrisome.

25 And managing editor, Will Dana, and the Columbia

1 Journalism School said, "Every single person at every level of
2 this thing had the opportunities to pull the strings a little
3 harder, to question things a little more deeply, and that was
4 not done."

5 In October 2014, Jackie stopped communicating with
6 Ms. Erdely for several weeks and tried to back out of
7 participating in the article. She didn't return phone calls
8 or text messages. Ms. Erdely new that Jackie was in full
9 freak-out mode.

10 Remember this e-mail that I played for you in
11 opening. "Fuck. Jackie is apparently in full freak-out mode
12 right now. Her friend Alex texted to say that Jackie is right
13 now saying she wants her name out of the piece and is thinking
14 of pulling out entirely." Quote, thinking of pulling out
15 entirely, close quote.

16 "I suspect I may need to go back to Charlottesville
17 to hash things out with her face to face. Fuck."

18 Now, we heard testimony of what was going on behind
19 the scenes on the other side of this, Jackie having concerns
20 about her personal safety and her friends being concerned for
21 her personal safety. But they plowed ahead with it anyway.
22 They pushed Jackie to participate, texting Alex Pinkleton to
23 pass a message along to Jackie.

24 Alex says, "She feels like she's being pushed." She
25 is told, "Jackie is an essential part of the article, and I

1 need to be clear about this. There's no pulling the plug at
2 this point. The article is moving forward, and I think it's
3 important that Jackie stay involved."

4 Doesn't say that "I think it's important that
5 Jackie's story be told" or "I want to write the article with
6 someone else, and I think Jackie should stay involved in the
7 process."

8 "The article is moving forward. I think it's
9 important that Jackie stay involved." And Jackie, a
10 vulnerable college student, hearing this from a news reporter
11 at a national magazine, gave in and reengaged.

12 With all the facts I've outlined for you and the
13 evidence in this case, it was absolutely reckless for Rolling
14 Stone and Ms. Erdely to build the entire narrative of their
15 story around Jackie and her stories. And remember, what
16 Jackie knew -- I'm sorry, what Rolling Stone and Ms. Erdely
17 knew about the interactions with Nicole came from Jackie.
18 It's not just about the rape story. It's not just about what
19 happened at Phi Psi. Jackie was the one that was reporting on
20 what Nicole -- her interactions with her. And all of those
21 were positive.

22 "I love Nicole. She was a huge support for me."
23 You saw the e-mails with all the support that was provided.
24 And they had all of them. They knew about all of that.

25 They admit now, and they've admitted on the stand,

1 that they made some very, very serious journalistic mistakes.

2 And you're entitled and should consider those
3 mistakes as to whether or not this was reckless.

4 They admitted that they made a mistake in relying on
5 Jackie as a source.

6 They admitted they made mistakes engaging in
7 misleading attributions to Jackie.

8 They admitted they made a mistake by not calling
9 Kathryn Hendley, whose name they had; not insisting on talking
10 to Ryan Duffin or Alex Stock; not insisting on getting Jay's
11 name; not disclosing to readers that Jackie refused to
12 identify who Jay was by taking out that disclosure that Jackie
13 had refused to do that. They admit that it was a mistake to
14 tell the Washington Post that they could verify who these men
15 were, or not providing more detail.

16 Now, maybe one or two of these mistakes you could
17 say was careless, but not that many. How many times did you
18 hear these witnesses say, "To my deep regret, to my deep
19 regret, to my deep regret"? "When I said I was -- let me be
20 clear, I was the opposite of clear."

21 You can't have this many mistakes and have it be
22 just chalk it up to carelessness. It was reckless.

23 They had blinders on, ladies and gentlemen. They
24 had blinders on. This preconceived story that they wanted to
25 write and their views on these issues put blinders on them.

1 They had blinders of a preconceived storyline. They had
2 blinders of believing that the subject matter of the article
3 is more important than factual accuracy. And the blinders
4 that come with having the reporter's good friend edit the
5 story. Those are blinders.

6 Now, if we were to get behind the wheel of a car and
7 drive down the highway with blinders on, there would be no
8 difficulty concluding that it would be reckless. And this is
9 no different.

10 Here these folks were not driving a car with
11 blinders on. They were driving something just as dangerous:
12 a heavily promoted feature story in a national magazine that
13 reaches millions and millions of people. That comes with the
14 responsibility not to be reckless and to take those blinders
15 off and to see the full picture.

16 But they weren't just reckless in how they
17 approached the truth about Nicole. We spent a lot of time
18 talking about Jackie. Let's talk about how they approached
19 Nicole.

20 The disregard of the truth with Nicole was a lot
21 more deliberate and a lot more intentional because the facts
22 were a lot more one-sided.

23 All of those survivors, all of those things in the
24 reporting file talked about how much they loved Nicole and how
25 much -- what Nicole had done for them and empowered them.

1 And you could see the love that these students have
2 for her. You had a chance to observe their demeanor when they
3 wrote and talked about her.

4 Let's look at some of the statements in the article,
5 the ones that we're here on, the ones that you're going to be
6 asked to pass on, and see how they deliberately twisted
7 information in order to make Nicole look bad.

8 Defamatory statement number one: "'Lots of people
9 have discouraged her from sharing her story,' Jackie tells me
10 with a pained look, including the trusted UVa dean to whom
11 Jackie reported her gang rape allegations more than a year
12 ago."

13 But Nicole did not discourage Jackie from sharing
14 her story with anyone. And the defendants knew it before the
15 article was published.

16 First, they had Jackie's e-mail to Nicole where
17 Jackie credited Nicole for helping her to speak publicly at
18 the Take Back the Night vigil about her assault.

19 "Hi, Nicole. Thank you so much for everything
20 you've done this week. I couldn't have gotten up last night
21 and spoken if it wasn't for you and all the help you've given
22 me."

23 And they had Nicole's response to that e-mail where
24 she says, "It was great to hear your voice, strong and clear,
25 last night. You should be very proud of how far you've come

1 and the work that you're doing. I'm glad that I could play a
2 very small role in that for you."

3 Rolling Stone says -- and Mr. Sexton will stand up
4 later and say -- well, they weren't talking about discouraging
5 her from taking the case forward; they were talking about
6 speaking publicly or talking to Rolling Stone. And he's going
7 to point you to other words in that paragraph about speaking
8 publicly.

9 This was a public speech. These e-mails that he had
10 referenced Nicole Eramo having an exchange with Jackie saying,
11 "I'm proud of you for speaking publicly at a public event,
12 Take Back the Night vigil," and Jackie thanking Nicole for
13 playing a role in getting her to the point where she was
14 strong enough and well enough to speak publicly about that.

15 Regardless of what interpretation to that story --
16 that article -- that sentence you put on it, it's false. She
17 didn't discourage her from talking to the police; she didn't
18 discourage her from taking it to a formal hearing; she didn't
19 discourage her from moving it forward in a university
20 disciplinary process. She did none of those things. But she
21 also didn't discourage her from talking publicly about her
22 assault. Take Back the Night, the vigil, disproves it.

23 These e-mails were in their possession. They knew
24 it, and they wrote it anyway.

25 They knew that Nicole had taken Jackie to meet with

1 the police. They had, from different documents they had, the
2 two police officers, Officer Rexrode and Detective Via, both
3 of whom you heard from. They knew prior to publication that
4 Nicole had taken her to the police.

5 And they have an explanation for that too. And at
6 some point you have to ask yourselves: If you have to explain
7 away this many things, can you believe what they're saying?

8 They have an explanation, that we thought this was
9 only about the bottle incident; we didn't know it had to do
10 with the sexual assault.

11 Mr. Sexton said in his opening statement a phrase
12 that struck me. He said, "We're not mind readers."

13 No, they're not mind readers. They're investigative
14 journalists. We don't expect them to be mind readers. We
15 expect them to investigate. We expect them to do their job.
16 We expect them to pick up the phone and call people to
17 confirm.

18 They got this information, and they did nothing to
19 follow up. They never asked Jackie, with all of these
20 interactions, all these hour-long dinners and informal
21 meetings and phone calls and text messages and all the
22 communications they had with her, they never asked Jackie,
23 "Did you talk to the police about your sexual assault?"

24 The word "police" does not occur anywhere in the
25 article as it relates to Nicole and Jackie.

1 That's an important fact when you're saying that you
2 don't encourage or provide guidance to survivors. Even if it
3 was just about the bottle incident, which it wasn't -- and you
4 heard the testimony, and I'm going to come back to explain and
5 remind you why it wasn't -- even if you thought it was just
6 about the bottle incident, there still isn't a reference. It
7 was in there in the draft, and they cut it.

8 Why? Because if they had put it in there, it would
9 have undermined the story they wanted to tell of a woman who
10 was being retaliated against and was being mistreated on
11 campus for speaking out and wasn't told to go to the police.

12 They also had Nicole's e-mail of May 24, the one
13 right after Jackie had first come to her.

14 Remember, when Jackie first reported, she didn't
15 tell Nicole about Phi Psi. It wasn't until almost a year
16 later that she first said it had happened at Phi Psi.

17 And she didn't tell Nicole any of the details that
18 were published in the Rolling Stone. It was a different
19 story. And she refused to allow any further investigation or
20 make any report or go to the police, even though all of those
21 options were presented to her and even though Nicole Eramo
22 said, "I do want you to consider those options."

23 Rolling Stone edited out that part of the e-mail and
24 said she'd be happy to assist if you decide at some point that
25 you'd like to hold these men accountable.

1 Nicole didn't discourage anything, and they knew it.
2 They made these false allegations that Nicole discouraged
3 Jackie, even though, as Liz Garber-Paul testified, there was
4 no evidence to support a notion that Dean Eramo sought to
5 suppress the gang rape.

6 "Q Did you see any materials or any
7 evidence in the materials that you reviewed
8 suggesting that Dean Eramo sought to suppress
9 Jackie's gang rape?

10 "A No.

11 "Q As the fact-checker for Rolling Stone
12 magazine, do you believe that it's true or
13 false that Ms. Eramo sought to suppress
14 Jackie's gang rape?

15 "A No, I don't believe it's true.

16 "Q You believe that's false?

17 "A Yes."

18 That's Wenner Media talking on the stand through its
19 employee, Liz Garber-Paul, who had the entire reporting file.

20 Instead, what they did was they twisted the positive
21 information they had about Nicole in order to make her look
22 like she was suppressing Jackie's sexual assault.

23 Jackie wanted to pull out of the article because she
24 was scared for her personal safety. She was freaking out
25 about that. At least that's what she was telling people.

1 The people who actually cared about her and weren't
2 using her for a story, the people who actually cared about
3 her, her friends and Nicole, were worried about her safety.
4 Jackie shared those concerns with her friends, with Officer
5 Rexrode, and also with Nicole.

6 Remember Emily Renda? What did she say about this
7 whole episode of why it may not be a good idea for Jackie's
8 name to be in the story?

9 She told Ms. Erdely that she worried that
10 prematurely naming Phi Psi in a national magazine would
11 undermine the ongoing efforts to do something punitive to
12 Phi Psi and making that stick and would damage the credibility
13 of the two other women that Jackie claimed had been attacked.

14 "Our goal is to get good punitive action to stick,
15 so we're trying to work the back channels to get them to come
16 forward."

17 That was the concern. But Ms. Erdely took these
18 legitimate concerns about Jackie and Phi Psi, which all
19 stemmed from the university wanting to do something to punish
20 these folks if this had occurred, and misrepresented them in a
21 way to make it appear like Nicole had tried to discourage
22 Jackie from sharing her story with anyone, including the
23 police and including her peers.

24 The fact-checker, again Ms. Garber-Paul, admitted
25 under oath that she did not see any evidence suggesting that

1 Nicole discouraged Jackie from moving her case forward.

2 "Q Did you see any evidence in materials
3 that you reviewed suggesting that Dean Eramo
4 discouraged Jackie from moving her case
5 forward?

6 "A No, I did not."

7 Now, remember these markups that Liz Garber-Paul did
8 to this paragraph of the article, the one that we're suing on,
9 one of the ones that we're suing on. It's hard to read, but
10 look in the markup and the red text next to it. We've kind of
11 reproduced it there in text.

12 "Lots of people have discouraged her from sharing
13 her story," Liz Garber-Paul writes, "'so publicly,' Jackie
14 tells me with a pained look, including the trusted UVa dean to
15 whom Jackie reported her gang rape allegations more than a
16 year ago."

17 And then Liz Garber-Paul writes, "Who fretted that
18 the article might complicate future proceedings."

19 That's kind of an important fact. It would have
20 made clear what was really going on here, that this was an
21 effort to complicate the concern about, if there was one, what
22 had to do with proceedings that the university and Nicole
23 wanted to see happen.

24 But she was overruled by Sean Woods in making those
25 edits. It wasn't an accident. It didn't happen because they

1 believed Jackie, which is their defense now. It was a
2 deliberate and intentional choice by a journalist and her
3 editor to misrepresent what was in their own reporting file,
4 that this was -- any concern about talking was in an effort to
5 do something against the fraternity.

6 That deliberate choice is actual malice.

7 Let's talk about the rape school quote. The
8 statement is "Like most colleges, sexual assault proceedings
9 at UVa unfold in total secrecy. Asked why UVa doesn't publish
10 all of its data, President Sullivan explains that it might not
11 be in keeping with best practices and, thus, may inadvertently
12 discourage reporting.

13 "Jackie got a different explanation when she'd
14 eventually asked Dean Eramo the same question. She says Eramo
15 answered wryly, 'Because nobody wants to send their daughter
16 to the rape school.'"

17 The sole source for this inflammatory quote is
18 Jackie.

19 Now, you heard Nicole look you in the eye and
20 testify she never said this to Jackie or otherwise. She's
21 never referred to UVa, her alma mater, the school that
22 educated her, the school where she works and the school where
23 her husband works, she never referred to this institution as
24 the rape school. And other witnesses, Dean Groves and others,
25 confirmed that they've never heard Nicole say things like

1 this.

2 They knew that Jackie was at the time emotionally
3 fragile and starved for attention. "Attention-starved" is
4 what it says in the article. And there's a reason why they
5 chose to violate journalistic standards and avoid confirming
6 this quote with Nicole.

7 The fact-checker -- again, Ms. Garber-Paul -- told
8 them that Jackie was the only source for this rape school
9 quote. Mr. Woods, on behalf of the magazine, made the call to
10 publish it anyway, without verifying it with Nicole.

11 That was a choice, a deliberate choice, not to
12 verify it with Nicole.

13 Now, let's look at what their explanation for this
14 is, the explanation for why you don't do what journalists are
15 supposed to do.

16 They say, "Well, UVa told us we're not allowed to
17 interview Nicole."

18 That doesn't absolve them of their obligation as a
19 journalist or their responsibility to verify and fact-check
20 things.

21 Investigative reporters, serious journalists, like
22 the ones that are at issue here, they don't listen to what
23 public relations departments say if they're in pursuit of an
24 investigative story and they want to get to the truth. They
25 don't just read the press release and report on it. That's

1 not what investigative reporters do.

2 They never asked Nicole whether she said it. They
3 knew that Nicole had responded to Sabrina's e-mails. They had
4 her e-mail address. They had her telephone number, which was
5 publicly available and on her e-mail signature. They didn't
6 ask Nicole.

7 They never asked UVa. They were in regular contact
8 with UVa, as a follow-up to the Sullivan interview, asking a
9 lot of questions about a lot of different things, but they
10 never once asked Nicole or UVa to verify the rape school.

11 Columbia Journalism School said, "Journalistic
12 practice and basic fairness requires that, if a reporter
13 intends to publish derogatory information about anyone, he or
14 she should seek that person's side of the story."

15 That applies to Nicole. That applies to the three
16 friends.

17 Do they need a break?

18 THE COURT: They do.

19 MR. CLARE: Okay. Sorry.

20 THE COURT: So we'll take a midmorning break.

21 Ladies and gentlemen, I would ask that, while you're
22 away from the court, you not discuss the case, the arguments,
23 the evidence with each other. Do not permit anyone to discuss
24 it with you.

25 Let's plan to return at 25 until the hour.

1 Ask the marshal to declare court in recess.

2 (Recess)

3 (Jury in)

4 THE COURT: JoRita can report that all ten jurors
5 are back in the jury box.

6 You may continue.

7 MR. CLARE: Thank you.

8 Trials like this are sometimes made up of small
9 moments, and on the break I was reminded that I was the one
10 that stood up during jury selection and talked about being in
11 the unenviable position of being the lawyer who has to talk to
12 you all before lunch and standing between y'all and lunch. I
13 was talking about Mr. Sexton then, but now it's me. And I beg
14 your indulgence.

15 We were talking before the break about the rape
16 school quote and about how Jackie was the sole source and
17 about how the decision was made not to follow the journalistic
18 practice and verify with Nicole.

19 The fact-checking on the rape school quote showed
20 something else too. The fact-checker's notes show that the
21 entire setup for the rape school quote in the article, that
22 Jackie had tried to find UVa's rape statistics, never
23 happened.

24 These are the notes about the rape school quote.
25 And you see in the text of the article, there's the whole

1 setup where Jackie is supposedly looking for statistics. She
2 clicked around on the website. She found no answers. All she
3 could find were UVA's police crime logs.

4 A little bubble down on the right-hand side says,
5 "She says never happened. She said she never looked into
6 this," meaning Jackie never looked into this.

7 That's the setup for this quote, this rape school
8 quote. But that correction, like all the others that we've
9 looked at, this correction that would have fixed the fake
10 setup for the rape school quote, was never corrected and was
11 published in the article as is.

12 That was a deliberate editorial choice to give
13 additional credence to that statement. And they chose not to
14 verify it. That is actual malice.

15 Those editorial decisions disregarding things,
16 including the fact that the fact-checker said "never happened"
17 as the setup for this quote, shows they were trying to portray
18 Nicole in a negative light.

19 Statement number three: Nicole's nonreaction,
20 alleged nonreaction, to the stories of gang rape.

21 "As Jackie wrapped up her story, she was
22 disappointed by Eramo's nonreaction. She'd expected shock,
23 disgust, and horror."

24 That is a false statement. This is the meeting in
25 May of 2014, as you see at the top here, the paragraph. This

1 is the one, the meeting a year after the first time Jackie and
2 Nicole had met, where Jackie tells Nicole for the first time
3 Phi Psi. First time Nicole knew the location, and also
4 reported these two other women that Jackie said had come to
5 her about other assaults at that fraternity.

6 It's false that there was a nonreaction. You heard
7 Nicole testify that Jackie left her office, and she
8 immediately picked up the phone and called the police, set up
9 a meeting the very next day with Officer Rexrode and
10 immediately informed Dean Groves, her boss.

11 It's false to say that she had a nonreaction.

12 Now, Rolling Stone says, "Well, we're only talking
13 about her physical reaction, only talking about her face and
14 the way that she reacted in the moment. We're not talking
15 about her broader reaction that she had," which is clearly
16 false, and that's why they don't want to talk about it.
17 "We're talking about her physical reaction and what she said
18 and did in the moment with Jackie."

19 But even that interpretation, the one that Rolling
20 Stone has urged you to adopt, is flatly contradicted by
21 Erdely's own reporting file. This is what her reporting file
22 says about that.

23 It says, "Jackie told Erdely that, after hearing
24 Jackie's claim, Nicole wasn't as shocked as you might think.
25 She was just, 'Oh, you have to have her come in.' She wasn't

1 like, 'My God, that's crazy.' She was more concerned than
2 anything for these girls' well-being. And then she got pissed
3 at the frat. She said two fraternities had lost their charter
4 this year, and it wouldn't bother Nicole at all to add a third
5 to the list."

6 That was her reaction. "Get these girls in here.
7 I'm concerned for their well-being." And then after that
8 initial reaction of concern for the students, which is what
9 you'd expect from Nicole -- first caring about the students --
10 after that moment passed, then she got pissed at the frat.

11 Those are Jackie's words reported and recorded in
12 Nicole's own file.

13 Now, where in the article, even under their
14 interpretation, do you see this? Where do you see her saying,
15 "I would like to add a third fraternity to the list of ones
16 that I've had to revoke their charters."

17 That's not a nonreaction. That's anger. That's
18 frustration. That's "I want to punish these guys on hearing
19 this information."

20 Intentionally left out of the article why?

21 Because it didn't support the theme. Selective
22 inclusion, reckless disregard for the falsity of what they
23 were writing. They intentionally disregarded the part where
24 she says she was concerned for well-being. They intentionally
25 disregarded the part that said Nicole got pissed at the frat

1 and it wouldn't bother her to add a third. And they
2 intentionally transformed Jackie's characterization of
3 Nicole's professional demeanor, "not being as shocked as you
4 might think," to something that would sound more like
5 institutional indifference, a disappointing nonreaction.

6 These were deliberate and intentional word choices
7 made by professionals who make their living working with
8 words, these reporters and editors. It's a false statement,
9 and it was done intentionally and deliberately, with actual
10 malice.

11 Now, there were a bunch of statements made after the
12 fact, during the press tour. On The Brian Lehrer Show,
13 Ms. Erdely said that "Jackie was kind of brushed off by her
14 friends and by the administration. She was told -- she told
15 the administration that she had been brutally gang-raped, and
16 the university did nothing with this information. Jackie's
17 situation blew my mind, that they would seek to suppress
18 something like this, because that's really what they did. She
19 really had not had any of that support from the
20 administration," talking about Jackie. "The administration
21 doesn't really treat rape as a crime, as a violent crime."

22 This one is really amazing.

23 "Not only did they not report it to police, but
24 really I feel she was sort of discouraged from moving this
25 forward."

1 And tell the Washington Post, Ms. Erdely did, that
2 Jackie's gang rape allegations were met with indifference by
3 the administration.

4 Now, I've lumped all these together because,
5 otherwise, I'd be talking to you before dinner, not lunch.
6 These are the statements, the other statements, that were made
7 after the article came out.

8 And what's important about these, and what I would
9 urge you to focus on, is this is Ms. Erdely being asked
10 questions about her article. And all of the references here
11 are to Jackie and Jackie's interactions with Nicole.

12 They'll tell you that's not what the story is about.
13 They're going to say it's about victim choice and campus
14 safety, but all of these statements are about describing
15 facts, or purporting to describe facts, about what the
16 administration and administrators did to Jackie.

17 And the only administrator in the article who did
18 anything to Jackie or with Jackie or for Jackie described in
19 the article, in terms of what the millions and millions of
20 people knew, was Nicole.

21 And the jury instructions, you will see, that in
22 order for a statement to be about someone, they don't have to
23 be mentioned by name. It's enough if the reference makes it
24 clear.

25 These statements are clearly referring to the person

1 who was interacting with Jackie, and that person was Nicole.

2 When the news organizations, these other reporters,
3 started asking questions, Rolling Stone then doubled down in
4 that defamatory statement Number 7 with a press statement.
5 Wenner Media and Rolling Stone issued a press release.

6 "The story we published was one woman's account of a
7 sexual assault at a UVa fraternity and the subsequent ordeal
8 she experienced at the hands of university administrators in
9 her attempts to work through the trauma of that evening."

10 Remember, if you want to know what's really true,
11 you got to look at what people wrote and said at the time.

12 This is how they described the story. They didn't
13 say, "We were writing an opinion piece about victim choice or
14 campus safety."

15 "The story we published was an account of one
16 woman's sexual assault and the ordeal that administrators put
17 her through."

18 What ordeal was that? Who are they talking about?
19 Who are the university administrators who put her through an
20 ordeal? It was Nicole that they were accusing here in their
21 press statement issued when questions started to arise. They
22 doubled down.

23 Now, all of these statements, all the ones that
24 we've just looked at -- the ones in the article and the ones
25 that came after the article and the press statements -- I told

1 you in opening statement that the most powerful evidence and
2 the one thing, was the number one thing I wanted you to keep
3 in mind, was the fact that Nicole took Jackie to the police.

4 Immediately after that meeting where Phi Kappa Psi
5 was identified, Nicole arranged for Jackie to meet, and she
6 drew on the relationship that she had built. You heard her
7 testify that she had been the one in her office to develop
8 this relationship with the victim coordinator to make sure
9 that there was a police officer, a law enforcement person, who
10 was trained and experienced and comfortable working with
11 sexual assault victims so that they would report and so that
12 they would feel comfortable reporting.

13 And she arranged, Nicole arranged, for the meeting
14 to take place in an environment where Jackie would feel most
15 comfortable talking about her assault: Her own office. She
16 brought Officer Rexrode and Officer Wade to her office. And
17 Nicole sat there with her and attended the meeting with her to
18 support her in reporting the bottle incident and support her
19 in reporting the sexual assault. But Jackie was still
20 unwilling to go forward.

21 Those facts appeared nowhere in the article.

22 So the article, which is plainly about what they
23 told the Washington Post, the ordeal that they experienced at
24 the hands of administrators, is completely undermined by the
25 meetings with the police.

1 Nicole then arranged for a second meeting with
2 Detective Via just a few days later, and again she attended
3 the meeting to support Jackie in reporting the rape. That
4 meeting was only about the rape.

5 Jackie shut down immediately, you heard. Detective
6 Via said she would not report, she would not allow her name to
7 be used, she would not allow it to go forward. Sergeant Via
8 told you that, in the Commonwealth of Virginia, in his
9 experience, without a complaining witness, there's nothing
10 more they can do.

11 So they suspended their investigation but said,
12 "We'll keep it open. We will close it; we'll suspend it; but
13 we will reopen it any time Jackie wants to come forward."

14 And Nicole worked on it from that point forward. So
15 this notion that they put her through an ordeal, that they
16 suppressed or they discouraged it, is flatly wrong.

17 And you're entitled to bring your common sense, and
18 you should bring your common sense, to evaluating the
19 arguments that Rolling Stone makes.

20 They say that this meeting was just about the bottle
21 incident. Well, all these statements -- brushing off and
22 suppressing and trying to keep sexual assault statistics
23 low -- if Nicole Eramo was trying to suppress gang rape on
24 campus and was in the middle of trying to suppress Jackie's
25 gang rape in particular, why would she take Jackie to meet

1 with the police about anything? And why would she go to these
2 efforts to do it?

3 Just doesn't make any sense. If she was in the
4 middle of an ongoing coverup of Jackie's assault or trying to
5 discourage her from going to the police, why do it at all,
6 even if it was just about the bottle incident, which it
7 wasn't?

8 Rolling Stone knew about the police meetings. They
9 knew Officer Rexrode, his name. They knew he's listed in the
10 university directory, publicly available information. They
11 also had the e-mail where one of the police detectives, police
12 officers, was described as being a little aggressive about
13 investigating. And Nicole is apologizing for that because it
14 was scaring Jackie off.

15 The defendants knew this. All of them knew this.
16 Ms. Erdely had it. Rolling Stone employee Sean Woods had it.
17 Wenner Media employee Liz Garber-Paul had it. And an early
18 draft of the article even had a reference to this. So we know
19 they knew, as it related to the bottle incident, this
20 parenthetical.

21 Now, there's lots of other parentheticals that were
22 not cut in the article. We were told it was cut because it
23 was a parenthetical. Look, there are other ones in there.
24 Those weren't cut.

25 But the one that made Nicole look good, the one that

1 might have cast some doubt on Jackie's -- the fact that Jackie
2 had been brushed off, that one was cut. That was edited out.
3 That's the way it was reported.

4 They made an intentional decision to remove the
5 reference to police from the article. That's actual malice.

6 No references to the police meetings appear anywhere
7 in the 9,000 words of the article. And so when 2.7 million
8 people went to the website to view it online and millions more
9 people read this article in print, they never knew that Nicole
10 brought Jackie to the police for two meetings, for anything,
11 much less the truth that you heard from Nicole and Rexrode and
12 Via. Instead, they were left only with the words that were
13 written in the article. And Ms. Erdely said after the fact
14 that she was discouraged from moving forward, her allegations
15 were brushed off, her report was suppressed, and they met her
16 with indifference.

17 Now, I want to spend a few minutes talking about
18 their interpretation of the article. Make no mistake, the
19 article is about Jackie's interactions with Nicole. It's
20 clear. Read it for yourself and you'll make up your own mind,
21 that their after-the-fact explanation is to say, no, it really
22 wasn't about Jackie and Nicole. It didn't matter which
23 foundation we built our house on. Doesn't really matter which
24 story we picked. It was all about victim choice, and it was
25 about campus safety. And this was an opinion piece about

1 those things.

2 Well, that's not the style of the reporting. They
3 say don't pay any attention to the fact that Nicole is
4 mentioned 30 times by name in the article. Don't pay any
5 attention to the fact that she's mentioned ten times by her
6 title. Don't pay any attention to the fact that she's the
7 only person described in the article as interacting with
8 Jackie and in these other cases that they report. That wasn't
9 the case.

10 She's the only person pictured in the article with a
11 photo illustration. Don't pay any attention to the press
12 releases where Rolling Stone says her claim was met with
13 indifference. Despite this, they say it's not really about
14 Nicole; it's about victim choice and public safety.

15 Nonsense. It's not an opinion piece. They reported
16 Jackie's rape as if it happened, as a news item. And they
17 reported the interactions with Nicole as if it happened that
18 way, supported with factual, verifiable details that I showed
19 you during my opening statement. These are all things that
20 could have been verified. Same thing with the meeting after
21 the fact.

22 They reported this as a news story. This was not an
23 opinion piece why victim choice may not be the right answer.

24 And as I said, let's be clear. They're entitled to
25 have their opinions about victim choice or campus safety.

1 They're entitled to write a piece that says these things -- I
2 don't think that victim choice is the right one -- and have a
3 legitimate, honest debate about that. Reasonable minds can
4 differ about that.

5 They can criticize schools that implement it. They
6 can call on schools to change their policy.

7 None of what's going on in this case is about
8 stopping them from holding or writing those opinions. But
9 what you can't do when you're a journalist, even if you have
10 opinions, is make up facts to support them. And that's what
11 happened here, if, in fact, you believe they held these
12 opinions and that's what this is about.

13 They can't report as a fact a brutal gang rape that,
14 according to the Charlottesville Police Department, there's no
15 substantive basis to support. They can't falsely report that
16 Nicole discouraged or suppressed that assault in support of
17 their opinion when Nicole did everything right, including
18 taking Jackie to the police.

19 This isn't an opinion; that's dishonest reporting of
20 news, of facts. It's dishonest reporting of facts that gets
21 in the way of journalists' credibility. And when -- in this
22 case, when they disregarded the truth recklessly, as we've
23 hopefully demonstrated to you with clear and convincing
24 evidence, it's defamation.

25 But regardless of what interpretation of the article

1 you adopt -- and I urge and believe the evidence will show, as
2 shown, that this was about Jackie and Nicole -- even if you
3 buy their argument about police safety -- campus safety and
4 victim choice, the fact that Nicole took Jackie to the police
5 completely undermines both of those views.

6 Victim choice. They say it's about victim choice
7 and this is a piece about victim choice. But Nicole told you
8 that she brought up the rape to the police officers with
9 Jackie in the room without having Jackie fully on board with
10 that.

11 This is what she said in her trial testimony: "She
12 described the bottle incident to Officer Wade. She was
13 reluctant to talk about the rape. I, frankly, brought it up.
14 It was unusual for me to do something like that in that
15 situation, but, given the situation, I thought I had to bring
16 it up. So I brought up the rape and the other report."

17 That's not victim choice. Nicole recognized that
18 this was a serious situation and this was a young lady who
19 needed to be encouraged and needed to be pushed a little bit.
20 With the safety of two police officers in the room, she pushed
21 and she brought up the rape.

22 Flatly inconsistent with the concept of victim
23 choice. So the real facts negate that perspective as well.

24 Same thing with campus warnings. If that's what
25 they say this article was about now, contrary to what the

1 article says, Nicole bringing Jackie to the police undermines
2 that too. They say, well, she had this obligation to warn the
3 campus for public safety. Question I posed to Nicole:

4 "Q What department or division within
5 the university has responsibility for assessing
6 information and deciding whether or not a
7 warning should be issued to the campus?

8 "A The university police department."

9 That's what she did. She brought Jackie to the
10 people who make those decisions, campus safety. That's not
11 suppressing it. That's not doing nothing with the
12 information. That's not being indifferent. She brought
13 Jackie to the people that do this, the campus safety warnings.
14 So it undermines the campus safety thing as well.

15 We've heard argument -- or we've heard a suggestion
16 that -- in the article and in this lawsuit, that Nicole
17 brought some of this on herself because she didn't sit for an
18 interview. Nonsense.

19 We talked to you about FERPA and how that would have
20 limited her ability to talk about Jackie's case. The
21 defendants knew it. They chose not to ask Jackie for
22 permission to do that, leaving Nicole defenseless against
23 these allegations. Nicole wanted to be interviewed. Her own
24 e-mail said she had nothing to hide.

25 UVa decided that President Sullivan would do that

1 instead, to be the voice of the university on this important
2 issue, to take it seriously, to show Rolling Stone the things
3 that the university was doing. And, even then, you heard
4 yourself, though, on the audio that Ms. Davis and President
5 Sullivan said several times, we'll circle back with Nicole
6 Eramo on specific questions that they had.

7 No one ever prohibited her from contacting Nicole to
8 verify quotes. Nicole responded to every e-mail Sabrina had
9 sent. And they never verified that rape school quote.

10 Ms. Erdely's choice not to ask Jackie for a waiver,
11 for permission to talk to Nicole about these things or the
12 school about these things, left Nicole in a position that was
13 vulnerable and defenseless. And they knew it. They knew it.
14 It made her an easy target to make her the face. Because,
15 hey, she can't talk to us, so we don't know her side of the
16 story, and that gives us the excuse.

17 That's not an excuse. It makes it even more
18 important that they get the facts right from people with
19 firsthand information. They took full advantage of it.

20 They knew prior to publication that people would
21 read these stories about -- as Nicole keeping rapes quiet on
22 campus. They knew that was the -- what they were reporting
23 on. The fact-checker said -- there's a statement in the
24 article, in the draft, "It's because at UVa rapes are kept
25 quiet, both by students who brush off rapes as regrettable but

1 inevitable casualties of their cherished party culture and by
2 an administration which critics say is less concerned with
3 protecting students than with protecting its own reputation
4 from scandal."

5 When they were fact-checking this, Jackie told Liz
6 Garber-Paul, "Yes, but not Dean Eramo."

7 That correction was overruled too.

8 Remember the headline of the article? This was
9 written by the managing editor, Will Dana. And after speaking
10 to Jackie about it, the fact-checker writes, "Nope." But they
11 went ahead with it anyway.

12 The defendants intentionally ignored all of this
13 information that came up during the fact-checking. They
14 intentionally ignored all of the information that was provided
15 to them by their sources about what a good person Nicole was
16 and all that she had done and all the red flags about Jackie
17 and all the information about what she had done for Jackie.

18 And this is the way it was summarized in the first
19 draft of the article.

20 Jackie reports, "Gets the Eramo/UVa treatment."
21 They had a name for this.

22 Now, that language does not appear in the final
23 article. But it tells you what Ms. Erdely and Mr. Woods were
24 trying to convey to readers. This is "the Eramo treatment."
25 And just to make sure that nobody misunderstood what the Eramo

1 treatment was, they put that picture in.

2 Now, Rolling Stone's lawyers are going to want you
3 to focus on the so-called positive things that the article
4 says about Nicole. But the article, very cleverly and
5 deliberately, takes each one of these so-called positive
6 statements and juxtaposes them with negative ones to make
7 Nicole out to be a bad person, one who is actually involved in
8 suppressing the rape.

9 The article starts, as we showed, with a lengthy
10 description of Jackie and her rape and the horrifyingly
11 callous reactions of the three friends. And then we finally
12 get to Nicole.

13 It says -- these are some of the positive things
14 that they point to to say, we didn't really mean to hurt
15 Nicole. Well, let's look at how they did that. Let's look at
16 the positive things that they said.

17 "A UVa alum herself, Eramo is beloved by survivors,
18 who consider her a friend and a confidante, even though, as
19 only a few students are aware, her office isn't a confidential
20 space at all."

21 They take the positive, twist it into the negative.
22 "Even though." By juxtaposing these facts, they're trying to
23 make Nicole look bad. And that's malice.

24 Directly under the doctored photo of Nicole, this
25 photo illustration, it says, "Dean Eramo" -- "Where's the

1 justice?," it starts out. "Dean Eramo is the head of UVa's
2 sexual misconduct board and beloved by students."

3 We've heard that a lot. "We put that in the
4 article. We said she's beloved by students."

5 "But in the history of the school, no one has ever
6 been expelled for sexual assault."

7 Now, as you heard Nicole testify, she's not the
8 person who decides whether someone gets expelled or not for
9 sexual assault. Even though she is the chair of the sexual
10 misconduct board, she's not a voting member on the panel of
11 students and faculty that make those decisions about
12 sanctions. She doesn't hand out expulsions. She's not the
13 tsar of sanctions.

14 They said she's beloved by students, but where's the
15 justice? But no one has ever been expelled, suggesting, as is
16 shown elsewhere in the article, that she's discouraging
17 survivors from seeking justice.

18 If there was any doubt about how Nicole was
19 portrayed, here's the statement from Laura Dunn. Right after
20 they say -- right next to, in the article -- very clever, the
21 way this is done. Right next to it in the article, where it
22 says she's beloved by students, right next to it, "'This is an
23 alarming trend that I'm seeing on campuses,' says Laura Dunn
24 of the advocacy group SurvJustice. 'Schools are assigning
25 people to victims who are pretending or even thinking that

1 they're on the victim's side, when they're actually
2 discouraging them and silencing them. Advocates who survivors
3 love are part of the system that is failing to address sexual
4 violence.'" "

5 So this notion of being beloved by students is
6 paired two inches away with a quote about some people
7 pretending to be on a victim's side and then saying that
8 advocates who victims love are part of the system that are
9 discouraging people.

10 Here's another positive thing that they twist.
11 "Although many had contacted Dean Eramo, who they laud as
12 their best advocate and den mother, Jackie repeatedly calls
13 her an asset to the community."

14 First of all, the words "den mother" don't appear
15 anywhere in that reporting file, because no one actually told
16 Ms. Erdely they called Nicole that. She just made it up and
17 attributed it to survivors because "den mother" sounds good,
18 sounds like a word that they can use to kind of say something
19 good about you but in a slightly pejorative way.

20 And it's true that Jackie and many others described
21 Nicole as their advocate. But that didn't fit with the
22 storyline, so they needed to pair this with negative
23 information.

24 Dash, "Although many had contacted Dean Eramo, few
25 ever filed reports with UVa or with police," suggesting, with

1 the "although" and the dash, that that's Nicole's fault.
2 Again, it goes back to that first statement, "discouraging
3 Jackie from sharing her story."

4 Here's what Alex Pinkleton took about it. And the
5 article talks about how survivors beloved Eramo. Do you
6 remember that?

7 "So I'm not sure that that's something that would have
8 stuck out to a lot of people, because, again, this is an
9 article where it was, like, negative, negative, negative.
10 People were very angry at me for supporting the devil because
11 this was the woman painted in the article as sweeping rapes
12 under the rug."

13 That was Alex Pinkleton describing her reading of the
14 article and also her own experience with readers who told her
15 about it.

16 A picture is worth a thousand words. You saw how Rolling
17 Stone paid an award-winning illustrator to take this picture
18 of Nicole teaching a sexual assault mock trial, where --
19 teaching people how the university actually holds people
20 accountable for sexual assault, and converted it into this.

21 It shows Nicole -- it hides the welcoming gesture in her
22 right hand behind a computer. It shows her smiling and
23 sneering and giving -- appearing to give a thumbs-up.

24 Do you remember we asked Mr. Woods about the pen? He
25 said it was darker than he would have liked.

1 Well, when you have that dark pen, it sure looks like
2 she's sitting there giving a thumbs-up to this crying victim.
3 With that sneer on her face and with the eyes that way, it
4 doesn't paint her in a sympathetic light, which is what they
5 told you, that it shows her caring and supporting of
6 survivors.

7 There's signs right outside, right over her head, that
8 say "Stop victim blaming" and "No means no" and "She's broken;
9 he's okay."

10 And one other thing about the photograph that came up in
11 Mr. Ritter's testimony. Remember, he was the illustrator from
12 Pennsylvania who did it. I asked him:

13 "Q Did you alter the appearance of her
14 eyes or eyelids?

15 "A Yes. What I will do is -- when I'm
16 building a composition like this, is select
17 pupils of the eye, and then re-render, you
18 know, the eyes, and move the pupils to create a
19 glance to look at where it needs to look.

20 "Q And in moving the direction of the
21 irises in her eyes, did you also add or alter
22 the appearance of the whites of her eyes?

23 "A Yes. I rendered in the whites of her
24 eyes."

25 This is Mr. Ritter's signature style for villains in

1 articles. You may wonder why we put up these other Ritter
2 illustrations. I asked him, "These are the Cleveland Five,
3 with the whites of their eyes shown this way, terrorists who
4 hatched an unsuccessful plot to blow up a bridge; a student
5 whose locker is being searched for drugs with whitened eyes;
6 Henry Hill, the brutal mobster associated with the Lucchese
7 crime family, played by Ray Liotta in 'Goodfellas'; and a
8 Chinese sailor who was the cover art for an article, 'How We
9 Would Fight China.'"

10 This is the handwritten note written by the
11 fact-checker next to the illustration on a draft, "Is this too
12 mean?"

13 The top editors -- you heard testimony from their
14 corporate representative that this wasn't something that they
15 just kind of went through. They convened a group of people to
16 talk about whether this was too mean. And they all decided,
17 specifically and intentionally and knowingly, that they didn't
18 think it was too mean. And they published it anyway.

19 Managing editor, Will Dana, deputy managing editor,
20 Sean Woods, discussed it with Rolling Stone's in-house
21 counsel. Everyone agreed that it was not too mean and it was
22 a fair and accurate depiction of the situation in the story
23 and agreed to leave it as is.

24 In fact, Will Dana even e-mailed the team when he
25 saw the draft of it. And he was told that the illustration

1 was of Nicole Eramo. And he wrote, "This is great,"
2 exclamation point.

3 "Where's the justice?" is the way that they
4 captioned this article. This altered picture is the only
5 depiction of a real person in the article. And they published
6 this image with these defamatory statements to millions and
7 millions of people. They weren't trying to portray Nicole in
8 a balanced way.

9 All of these decisions, all these juxtapositions,
10 the "buts" and the "even though" and the "although she's
11 beloved by students," and all these things weren't done to
12 portray her in a balanced way; it was done intentionally.

13 But even if those textual examples leaves any doubt,
14 this photo drives home the point they were trying to convey,
15 when you're comparing Nicole, the same visual style that they
16 had used, the illustrator, with all these villains.

17 Now, when we asked them whether this is really a
18 fair and accurate depiction of Nicole, Ms. Erdely couldn't
19 decide how to respond.

20 "Q As you sit here today and think about
21 it, do you think it's a fair and accurate
22 depiction of Dean Eramo?"

23 This is one of those moments where you have to evaluate
24 the witness's demeanor and credibility. There was a long
25 pause in the court transcript where she thought about this.

1 And after days of trying to explain every other aspect of the
2 decisions, she sat there silently and said:

3 "A "I'm not sure there should have been
4 a picture of her in there at all. It could
5 have been anybody in that role."

6 And that's really, really telling. They wanted to
7 cast someone in the role of a villain, and it didn't matter to
8 them, it didn't matter to Ms. Erdely, that the person they
9 were casting as a villain and the person that they were
10 depicting is a real person, with a real life and a real job
11 and a real reputation and real relationships that she values
12 on campus and a reputation she spent decades building.

13 "It could have been anybody in that role."

14 It's reckless, it's cavalier, and it was
15 intentional.

16 So there were concerns about attribution and
17 misleading readers about where the article -- where the
18 article had gotten facts. They knew it was malpractice to
19 publish quotes without verifying them and to publish
20 derogatory accusations without giving people an opportunity to
21 comment. So they did it in a very clever way through the use
22 of pseudonyms and suggesting that other folks had actually
23 given these quotes.

24 Elisabeth Garber-Paul repeatedly raised these
25 attribution problems, repeatedly circled statements and asked

1 things like, "Put this on Jackie?" and "Is this on her too?"
2 Sean Woods overruled all of those concerns.

3 "Ask Sean. Need to put this on Jackie?"

4 Liz Garber-Paul later told the Columbia Journalism
5 School that she pushed for these attributions to be fixed, but
6 Sean Woods overruled her, deciding not to disclose to readers
7 this masking of attribution issues that would have let people
8 know that she had actually contacted -- that she had never
9 actually contacted the attackers, the three friends, or the
10 other alleged victims. Mr. Woods admitted this when we
11 questioned him about it.

12 "Q It misled Rolling Stone's readers
13 into believing that Rolling Stone knew who
14 these three friends were; isn't that correct?

15 "A I would agree with that."

16 Misleading readers. That's not journalism.
17 Journalists don't mislead their readers.

18 "Q Rolling Stone's editors did not make
19 clear to readers that Erdely and Rolling Stone
20 did not know Jay's full identity -- full name;
21 is that correct?

22 "A Yes, and I deeply regret it.

23 "Q Again, it misled Rolling Stone's
24 readers, did it not?

25 "A Yeah, I think it did."

1 Mr. Woods also admitted that there was a disclosure
2 in one of the drafts that Jackie had refused to identify Jay's
3 full identity.

4 "Q In one of the drafts that Ms. Erdely
5 had submitted to you, she had indicated a
6 disclosures to readers that she had not --
7 Jackie refused to identify Jay's full identity;
8 isn't that correct?

9 "A Yes. It was a line I'd asked her to
10 put in there.

11 "Q And you deleted it?

12 "A I did.

13 "Q And you did so intentionally?

14 "A Well, I pressed delete, so, yes, it
15 was intentional.

16 "Q You made an intentional decision to
17 remove the disclosure from readers that Jackie
18 had refused to identify who Jay was, did you
19 not?

20 "A I did."

21 The Columbia Journalism School criticized them for
22 this. "Glossing over gaps in the reporting by using
23 pseudonyms and failing to state where important information
24 had come from."

25 Misled sources, misled readers, and then misled the

1 media.

2 You heard Ms. Erdely admit on the stand that she was
3 being evasive when the host of the Slate podcast repeatedly
4 asked her if she knew who the attackers were or if she had
5 contacted them.

6 You also heard her testify that in response to a
7 direct question from the Washington Post about whether she had
8 talked to Drew, she elected not to answer and instead write
9 that she had seen scars. She hadn't.

10 You heard Erdely testify that she communicated with
11 her editor, Sean Woods, about that response.

12 Mr. Woods also lied to the media.

13 "Q Ms. Erdely" --

14 This is a question about the medical records.

15 "Q Ms. Erdely never got those medical
16 records, did she?

17 "A No, she did not.

18 "Q You told Mr. Farhi, the Washington
19 Post reporter, that the fact-checker reviewed
20 medical records; isn't that correct?

21 "A I did.

22 "Q You told Mr. Farhi, for publication
23 in the Washington Post, that we knew who
24 Jackie's attackers were, didn't you?

25 "A Yeah. I stepped over the line. It

1 was a big mistake on my part."

2 They lied to the media when things started breaking
3 bad. That's not journalism; it's a cover-up.

4 "Q You didn't tell Mr. Farhi, we don't
5 know who Jay is, Jackie declined to disclose
6 who he was, did you?

7 "A No, I did not.

8 "Q You didn't tell Mr. Farhi that you
9 used a pseudonym for Jay because you didn't
10 know who he was, did you?

11 "A No, I did not."

12 Remember, Mr. Wenner also lied to the media about
13 whether or not Mr. Woods and Mr. Dana had offered to resign.

14 "Q And your recollection is that both
15 Mr. Woods and Mr. Dana, on separate occasions,
16 offered to resign?

17 "A That's correct.

18 "Q Did you tell the New York Observer
19 that it was not true that --

20 "A If getting rid of them is, no, none
21 of your business, or, no, not true, or any of
22 their business, or even lying to them. They're
23 gossip reporters. I'm under no obligation to
24 discuss this or tell the truth to gossip
25 reporters."

1 So now, having seen these documents, the e-mails
2 that I showed him was back and forth with the paper.

3 "Q Does this refresh your recollection
4 that you told the New York Observer 'absolutely
5 not truthful'?

6 "A Yes.

7 "Q And your prior testimony is that you
8 thought it was okay to lie to them because it
9 was none of their business?

10 "A It's none of their goddamn business."

11 That was his answer.

12 There were lots of opportunities to stop this train
13 from running down the tracks. Even Jackie knew that
14 Ms. Erdely was -- had it out for Nicole and planned to publish
15 false statements about her. You heard the audio where they
16 tried to stop her from saying bad things about her.

17 And after the fact-checking conversation with
18 Jackie, Jackie went to Dean Laurie Casteen to report her
19 concerns and said that she thought -- " after talking to the
20 fact-checker late in the game, was worried that the article
21 would completely misconstrue her perspective. She stressed
22 her support for Nicole Eramo and talked incredibly about how
23 supportive she had been and that she was terrified that the
24 author was trying to do a hack job on Nicole and to get her
25 fired."

1 That was Jackie's perspective on it.

2 After the article came out, Jackie herself
3 repudiated, in texts to Ryan Duffin, "I tried to pull out
4 because I know her writing style and I know she would
5 sensationalize things and take extreme artistic license, which
6 she definitely did. But she said it would be published with
7 or without me."

8 This is Jackie's words now.

9 "I know she misrepresented you" -- you, Ryan -- "and
10 Alex and Kathryn as well as Dean Eramo and a lot of other
11 people in the story."

12 Under oath, when we finally got Jackie's
13 deposition -- you saw her and you saw the questions we asked.

14 "Q Did Nicole Eramo communicate to you
15 that she would help you if you elected to
16 pursue charges against your attackers?

17 "A Yes, she did.

18 "Q Did you believe that Dean Eramo could
19 have done more for you at the time during the
20 period of time that you were consulting her?

21 "A I don't know if it's that I believe;
22 it's that I personally thought she did
23 everything right.

24 "Q Was it your impression that
25 Dean Eramo was discouraging you from moving

1 forward with those options in order to suppress
2 the fact of it?

3 "A No. I never felt like she suppressed
4 my sexual assault."

5 This is the person who was the primary source for
6 their article. They built the foundation on this woman. And
7 this is her sworn testimony.

8 The timeline is important. The judge told you at
9 the beginning of this case -- and he'll tell you again in the
10 jury instructions -- the timeline of what happened here in the
11 publications were important. I want to spend a minute talking
12 to you about the timeline.

13 Ms. Erdely testified that she was under no time
14 pressure to get this article published. And that's a good
15 thing, because when you're not under any time pressure, you
16 have time to get the facts right. But they didn't do any of
17 the things that I've talked about today.

18 Instead, they published "A Rape on Campus" on
19 November 19, 2014, in print and online, and that's when it was
20 shipped out to newsstands. And they offered up Nicole as the
21 person who is the face.

22 The reaction to the article was swift and furious
23 after November 19. Angry protesters picketed outside of
24 Nicole's office, just like in this doctored photo.

25 Nicole had never had protesters outside of her

1 window before. Life was imitating art or, in this case, life
2 was imitating fiction. They created this reality.

3 That's when Nicole began receiving the flood of hate
4 mail calling her dean of rape, pathetic, a miserable excuse
5 for a human being, coward, scumbag, I hope you burn in hell,
6 shame on you.

7 These are not people who were reacting to a subtle,
8 nuanced, balanced picture of someone who was beloved by
9 students. This is the way real people read the article, and
10 felt compelled to express it to Nicole.

11 But importantly, people started to speak out. The
12 advocates, the people who actually knew Nicole, went -- tried
13 to write something public in support. On November 22nd, the
14 survivors that actually knew Nicole published those letters in
15 the Cavalier Daily, Emily Renda and Sara Surface and Jackie
16 herself. "We are writing today advocating for our advocate,
17 Nicole Eramo. In our darkest moments, Nicole has stood by us,
18 felt for us, listened to us, given us heart. How can we not
19 do the same for her in her darkest moments? We are advocates
20 because she advocated for us first. Now we stand for her."

21 Now, this is important. Jackie herself wrote an
22 article after "A Rape on Campus" came out, wrote an open
23 letter to be published in here.

24 "Dean Eramo has truly saved my life. She helped me
25 get through the most difficult time in my life and has been

1 with me every step of the way. There's no one more qualified
2 and more capable of doing this job. She is, above and beyond,
3 the best resource the university has."

4 So too with Stacy, this other person portrayed in
5 the article.

6 "I was saddened to see you portrayed in such a
7 negative light," she wrote. "I think highly of you and always
8 have. I hope that was not lost in the article."

9 Here's why the Cavalier Daily letter is important,
10 because the folks at Rolling Stone read it. They knew in the
11 days after they published the article that the very people
12 they were purporting to write about said, "That's not the
13 Nicole Eramo that we know. The Rolling Stone portrayal got it
14 wrong."

15 But instead of doing something about it, knowing
16 that there was this criticism from the actual real people, the
17 following Wednesday, November 22nd, the day before
18 Thanksgiving, Ms. Erdely was giving press statements. These
19 are the statements where she says "brushing off" and "didn't
20 take it to the police" and those sorts of things; just keep
21 going with the narrative, even though it's not correct, about
22 how the administration brushed off the gang rape.

23 We have the Brian Lehrer interview.

24 (Audio played)

25 Just after that, she went on Slate.

1 (Audio played)

2 And then something really important happens. While
3 she's out there repeating this narrative, continuing to double
4 down on the same allegations, she has a conversation with
5 Jackie that night and asked for the name of the ringleader,
6 finally. The story has already been published.

7 Asks and says, "Will you just tell me what the name
8 is?" Jackie gives her a name, and she tells the Columbia
9 Journalism School, "An alarm bell went off in my head,"
10 November 26.

11 Now, if you had just published an article that was
12 all based on a woman and her say-so on all these different
13 things and you have a conversation that causes an alarm bell
14 to go off in your head, and you really cared, you're going to
15 do something about it.

16 This is what her reporting note says about it.
17 "Mental note: It's odd that she doesn't know the name of her
18 attacker, but I ran James Larsen through the PeopleSearch, and
19 there's someone there by that name who's a UVa grad, now a
20 grad student. Google turns up nothing. I think I'll pursue
21 this more after the holiday weekend."

22 So the same day that she'd given these press
23 accounts and she talked on the phone with Jackie and asked for
24 the name of the ringleader, she goes off and enjoys a holiday
25 weekend, Thanksgiving.

1 And, meanwhile, in Charlottesville, Nicole is
2 spending that weekend in self-preservation mode. She's got to
3 avoid the media, avoid people, because she's the devil
4 portrayed in this article, while they sit and they wait after
5 the alarm bell had already gone off on November 26.

6 Now, the alarm bell is still ringing in the
7 background on December 1st when Rolling Stone issues that
8 "ordeal" press release. The alarm bell is ringing. December
9 1st, 2nd, 3rd, and 4th, first circulated on the 1st, and then
10 sent to a bunch of media outlets. The names are listed in
11 your jury books. They publish to the world a press statement
12 about the ordeal that these -- Jackie had experienced at the
13 hands of the university administrators.

14 The next day, December 2nd, Sara Surface talks to
15 Ms. Erdely about this guy, Jay Larsen. Sara and Alex
16 Pinkleton had done some investigative reporting themselves,
17 even though they're college students, not trained as
18 journalists. And they found out and they concluded for
19 themselves, I guess, that Jackie had given Ms. Erdely a fake
20 name, that this Jay Larsen person was fake. And they called
21 her up to tell her.

22 So we've got Jay Larsen out on December 2nd.

23 It was around that time they started looking back at
24 the reporting file. Mr. Wenner says, "I want you to go back
25 and figure out what happened."

1 Too little too late, though.

2 Ms. Erdely says, "I looked at everything with a new
3 skepticism, and I asked her all these questions with that new
4 skepticism in mind."

5 Why wasn't that skepticism there before they hit
6 print and before they sent out the article? All of those
7 questions that were then asked needed to have been asked
8 before it was first published.

9 And, finally, on December 5th we saw that "our worst
10 nightmare" e-mail. That's exactly what she wrote to Sean
11 Woods and Will Dana at 1:54 a.m., "It's our worst nightmare."
12 She says, "We can't run our statement tomorrow. In fact,
13 we're going to have to run a retraction." She said it twice.

14 But let's be clear about why she wrote this. We'll
15 come back to the lie of the retraction in a minute. But why
16 did she say this?

17 It wasn't because she felt bad for creating all this
18 damage to Nicole. It wasn't because she pushed a scared
19 college girl into this national spotlight. She wrote them
20 because she had to beat the Washington Post to the punch. "I
21 think we need to publish before the Post or else it will look
22 like the Post shamed us into it."

23 That was the reason why they came out with the
24 December 5 editor's note.

25 And look how they executed that December 5 editor's

1 note. Look what they did and didn't do. You heard Rolling
2 Stone's managing editor, Will Dana, who Sean Woods says is one
3 of the best in the business. He told Jann Wenner, "We got to
4 pull the article down." And Jann Wenner overruled him and
5 said, "We're going to leave it up."

6 They had a conversation. They made a decision,
7 we're going to leave the article up.

8 And so with their own reputation in mind, they
9 published this December 5th editor's note, which was a second
10 publication of the article. That second publication appears
11 behind Tab 7 of your jury book. You can read it as many times
12 as you want. You're not going to find the word "retraction"
13 in it because it isn't there. It doesn't say "retract,"
14 "retracting," "retracted."

15 You're also not going to find anything in there that
16 says they're backing away from their portrayal of Nicole
17 Eramo, and you're not going to find anything there explaining
18 what portions of the article that they were retracting.

19 Mr. Wenner, the boss, told us you would have to read
20 the article again to figure out what portions were sourced
21 from Jackie and which ones weren't. He was inviting people
22 with this editor's note that they published, expressly
23 inviting people, to read the article again with the editor's
24 note in mind and figure out what's true and what's false. He
25 knew more people would read it.

1 Here's what he said: "And certainly we also were
2 not withdrawing our reporting of a picture of the overall
3 situation on the UVa campus with regard to rape, Title IX, and
4 all the issues involved at which, you know, Dean Eramo clearly
5 in her office is a position of."

6 So they weren't. The boss. This is the guy who
7 said we're not going to take the article down. This is what
8 he had to say about it.

9 I asked him, "How would a reader know which portions
10 of the story were sourced from Jackie compared to the ones
11 that were not sourced from Jackie and, thus, that you were not
12 retracting?"

13 "I'd say you'd have to read the article."

14 Columbia Journalism School said, "What about the
15 attributions problems? Wouldn't that impair a reader's
16 ability to know?"

17 "Well," he says, "if it's not clearly stated who the
18 source is, of course you can't determine."

19 That was a republication of "A Rape on Campus."
20 They knew, Mr. Wenner knew, the boss knew, that people would
21 have to read the story again, including all of the defamation
22 and defamatory statements in there about Nicole, on
23 December 5.

24 And you will see a jury instruction that will talk
25 to you about republication and what factors you can consider.

1 And if you know people are going to be reading it and it's
2 going to generate additional content, evaluate for yourselves,
3 under the directions that the judge gives you, whether this is
4 a republication.

5 But Sean Woods also knew that it was going to be a
6 big news story when they put the editor's note up. And it
7 was. Remember, they flip-flopped positions. At first they
8 said -- the first editor's note said it's Jackie's fault; our
9 trust in her was misplaced.

10 They took that down and put up a new one with
11 another explanation saying, no, we've made some mistakes.

12 That generated huge publicity. Sean Woods said it
13 became a big news story when we put up this editor's note. We
14 knew people would still be looking for the story.

15 They knew, when they decided not to take the article
16 down, that people would not just read the editor's note but
17 would read the same defamation about Nicole.

18 And Jann Wenner, the boss, knew that there was no
19 way to tell that they were retracting the story about Nicole
20 without reading it again. And even then, because of the
21 attribution problems, it wasn't clear.

22 Even in the editor's note, they still want to get in
23 their dig, the one that they said was a retraction. They talk
24 about the university's failure to respond to this alleged
25 assault and the school's troubling history of indifference.

1 They still have to get their shot in, even in this retraction
2 where they're saying, well, we've made some mistakes.

3 You think a reader is supposed to take away from
4 that that Nicole Eramo, the person pictured in the article,
5 that they're withdrawing it? Of course not. Jann Wenner
6 never intended that. He told you so under oath. This was a
7 republication of the article.

8 It also says that "Because of the sensitive nature
9 of Jackie's story, we decided to honor her request and not
10 contact these men."

11 This statement falsely implies to readers that
12 Rolling Stone knew who the attackers were and that they
13 existed. And they didn't. It also implies that these are the
14 only key people in the article that they hadn't contacted or
15 confirmed. It wasn't.

16 And then they try to bolster Jackie's credibility.
17 "Jackie neither said nor did anything that made Erdely or
18 Rolling Stone editors or fact-checkers question Jackie's
19 credibility."

20 How are you supposed to take away that this is a
21 retraction of Jackie? They blame her. "Our trust in her was
22 misplaced."

23 Let's go back to our timeline.

24 Phi Kappa Psi comes out with a statement saying, "We
25 didn't have a party that night." Still no retraction of the

1 article. This is on December 5th. Still no retraction. We
2 know this because on December 8th, Sean Woods sends a
3 voicemail.

4 (Audio played)

5 Three days after the alleged retraction, here's the
6 deputy managing editor, "We are standing by the story. We
7 want to stand by the story."

8 This whole notion this was a retraction is a lie.

9 Back to the timeline.

10 December 11, the three friends come out debunking
11 Jackie's account. Still no retraction.

12 And as soon as this happens, remember, we saw
13 this -- Sean Woods sends a link of that news story, the ABC
14 news story, to Liz Garber-Paul. And three minutes later, Liz
15 Garber-Paul finds the e-mail addresses for Kathryn Hendley and
16 Alex Stock. Took her three minutes.

17 It was only then, a month after the first
18 publication and a week after the second, that anyone from
19 Rolling Stone reached out to the three friends. But even
20 then, they didn't retract the article. That's when they
21 started doing what they should have done all along, trying to
22 get the facts right.

23 December 22nd, they announce the investigation, the
24 Columbia investigation. They did not retract the article
25 then.

1 In January, February, or March, even when the
2 Charlottesville Police Department came out and said in March,
3 no evidence to support the account that was published in
4 Rolling Stone magazine, still no retraction.

5 It wasn't until April 5th, with the publication of
6 Columbia Journalism School Report, that Rolling Stone says,
7 "We are officially retracting 'A Rape on Campus.'"

8 By that time, the second publication had been seen
9 by a new audience. 425,857 unique visitors to Rolling Stone's
10 website between the December 5 republication and the time that
11 they finally took it down off the website in April.

12 That's nearly ten times the population of the city
13 of Charlottesville saw the article after it was republished.
14 And that's in addition to the 2.4 million people who saw it on
15 the website between the first and the second publication, just
16 online. That doesn't count the close to 11 million people who
17 got the print edition, according to Mr. Wenner.

18 But even now, even after all of this, Rolling Stone
19 doesn't stand by its retraction, even after they took it down.
20 Remember, Mr. Wenner, "Will Dana's retraction is inaccurate.
21 I do not stand by it. I do not retract the whole story."

22 Ms. Erdely sat here in the courtroom and claimed
23 that she believed that the portrayal of Nicole Eramo was fair
24 and accurate.

25 They're not retracting the story.

1 And the other thing that's evident from this
2 timeline about a retraction, so they put out a defective
3 product. They put out a defective journalistic product on
4 November 19 with this article. And when they went and
5 republished it on December 5th, they didn't tell people --
6 they said, well, there's problems with the article. But they
7 didn't tell people, who were still using that defective
8 product, which portions of it were defective.

9 Imagine, like, a car seat manufacturer puts out a
10 defective car seat, and then they discover there's a problem
11 and they say, well, we're not going to recall it yet. There's
12 a portion of this car seat that's defective. We're not going
13 to tell you which one, but use it for another five months, and
14 then we'll issue our recall."

15 That's reckless. That wasn't a retraction. 425,000
16 additional people saw it.

17 After hearing what Nicole had to say about what she
18 endured, Ms. Erdely tried to minimize it in saying that what
19 Nicole had experienced was hurt feelings.

20 There's no real dispute here that Nicole was damaged
21 by this, by the article and the media tour. You saw a small
22 portion of the hate mail she received. You heard testimony
23 about the protesters. And you heard Emily Renda testify about
24 how the article demonized Nicole.

25 That sentiment was echoed by Dean Groves, who talked

1 about the trust that had been diminished.

2 "It was our assessment and belief that Nicole could
3 not be put in the position of doing any intake whatsoever
4 involving individuals that were coming forward. I did not
5 believe she was anything other than fully capable of carrying
6 out her duties, but my fear and the fear of the other two
7 officials was that the perception came across in the student
8 body based on the article. If the students believed the
9 system is biased and that the person who is responsible for
10 doing intake has some predilection to protect the university
11 or dissuade them from action, they would not come forward."

12 And she was removed from doing the job, her dream
13 job. So in addition to the hate mail and the e-mails and the
14 rape threats and all of the emotional distress that came along
15 with it, her dream job was taken away from her.

16 Mr. Wenner said, "We apologize to anyone who was
17 affected by this story." And he said that Nicole was one of
18 the people to whom Rolling Stone was apologizing.

19 I don't think it was a real sincere apology, but he
20 admitted that Nicole has been damaged. Another one of the
21 elements we have to prove.

22 But it wasn't a real apology because he says, "Well,
23 Nicole is a victim in all of this the same that we all were."
24 It's really about them, that they were the ones that were
25 damaged.

1 But they're the ones that hit print. They're the
2 ones that made the decision to do this. Nicole didn't ask to
3 be included in this article. She's not the journalist. She's
4 not the one with the responsibility. They were. So it's
5 nonsense that they were damaged in the same way.

6 They created this problem. And Nicole and I are
7 asking you with your verdict to hold them responsible.

8 I'm almost done. To borrow Mr. Sexton's term, the
9 plane is about ready to land.

10 And we are asking you to return a verdict after you
11 deliberate finding that all of the defendants -- Ms. Erdely,
12 Rolling Stone, Wenner Media -- defamed her in "A Rape on
13 Campus," not just once on November 19, but in the second
14 publication on December 5th.

15 We're asking you with your verdict to determine that
16 Ms. Erdely defamed Nicole in the radio and podcast interviews
17 that she gave -- those are Statements 5 through 9 in the jury
18 book -- and that all of the defendants defamed her in the
19 statement issued to the Washington Post, Statement Number 10
20 in the jury book; and that Rolling Stone defamed her in the
21 press statement they issued in early December, December 1
22 through December 4.

23 The judge is going to give you a verdict form, three
24 of them. One is for Ms. Erdely, one is for Rolling Stone, and
25 one is for Wenner Media. And the jury verdict form is very

1 clear as to how you fill it out.

2 You have to answer questions for each one of these
3 statements for each one of the defendants. I'm not going to
4 go through all of them with you in terms of how to do that,
5 but I am going to show you the verdict form that the judge is
6 going to give you at the end of the deliberations, and I'm
7 going to show you an example of how we would ask you to fill
8 out the form.

9 Susan, can we turn on the Elmo?

10 MS. MOODY: Uh-huh.

11 MR. CLARE: So there are three of these forms, this
12 one right here, Special Verdict Form Number 1 for Sabrina
13 Rubin Erdely. And there are a number of different questions.
14 Each question has two parts for each one of the statements
15 that are at issue here.

16 Again, I'm not going to go through all of the
17 statements as to all of the defendants, but the verdict form
18 is set up in a very clear way to answer the questions.

19 As to this statement appearing in the November 19,
20 2014, print edition and online editions of "A Rape on Campus,"
21 1A, 1B, here's the statement -- the statement is reprinted
22 here for you -- "Do you find by a preponderance of the
23 evidence that this statement is actionable by satisfying each
24 of the elements set forth on page 23 of the instructions
25 against Sabrina Rubin Erdely?

1 Answer yes or no.

2 So for each statement, for each defendant, we're
3 asking you to answer that question yes.

4 If you answered the question no, go to Question 2.
5 But by answering yes, you then have to answer question 1B.

6 If you answer yes, answer the following question:
7 "Do you find that the plaintiff has established, by clear and
8 convincing evidence, that Sabrina Rubin Erdely acted with
9 actual malice in making this statement?"

10 We ask you, for each one of the statements, to
11 answer that question yes as well.

12 We ask you to answer yes to each of the questions
13 that are posed to you on the verdict form. All of the
14 questions for Ms. Erdely and all of the questions for Wenner
15 Media and all of the questions for Rolling Stone fit that
16 pattern.

17 But there is a question about republication, which
18 is a little bit different.

19 Bear with me one second.

20 THE COURT: Starts with Number 10 on mine.

21 MR. CLARE: Thank you, Judge. Yeah, this is it.
22 Thank you.

23 This is a different format than the one I had
24 prepared.

25 For each of the defendants there will be a similar

1 question about republication. That's Question 10 on this one
2 as it relates to Ms. Erdely.

3 "Do you find by a preponderance of the evidence that
4 Sabrina Rubin Erdely" -- or whichever defendant you're asked
5 about -- "republished the article 'A Rape on Campus' on
6 December 5th?"

7 And we ask you to answer that question yes as to all
8 the defendants, that they published these statements in "A
9 Rape on Campus" and then republished them on December 5 and
10 that all of the statements were made with actual malice.

11 As the judge instructed you, I'll have an
12 opportunity to stand up much more briefly after Mr. Sexton is
13 done and have some additional rebuttal remarks.

14 But I want to thank you for your patience again in
15 listening to us recount the evidence and describe for you what
16 we're asking. It's a very important case for Nicole, and
17 these are very important issues. And we appreciate your
18 patience and your time and your service. Thank you very much.

19 THE COURT: Ladies and gentlemen, we'll now have
20 lunch. I would ask that, while you're away from the court,
21 you do not discuss the case with one another and do not permit
22 anyone to discuss it with you. Even though plaintiff's first
23 argument has been made, don't begin to consider the merits of
24 the case and certainly don't begin to deliberate.

25 If you leave for lunch, I'm going to ask that --

1 remind you to leave your notebooks in the jury room. Don't
2 take your notebooks out with you.

3 Let's plan to return at 2 p.m. for the defendants'
4 closing statement.

5 Ask the marshal to declare the court in recess until
6 2 p.m.

7 (Recess)

8
9 CERTIFICATE

10 I, JoRita B. Meyer, certify that the foregoing is a
11 correct transcript from the record of proceedings in
12 the above-entitled matter.

13 /s/ JoRita B. Meyer

Date: 11/01/16